

## Matthew Cuevas

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**From:** Don McPherson <dmcphersonla@gmail.com>  
**Sent:** Monday, August 25, 2014 8:43 AM  
**To:** Liza Tamura  
**Cc:** Mark Danaj; Richard Thompson; Laurie B. Jester; Matthew Cuevas; Nathaniel Hubbard; Wayne Partridge  
**Subject:** For the Staff Report: Appellants Input for Shade Hotel Appeal, September 2  
**Attachments:** 140824-ShadeAppeal-AppellantsWrittenInput-Final.pdf; 140824-ShadeAppeal-ExhibitsCompiled-Final.pdf; 140822-Palmer-Barrow-Letter re Shade Hotel -McPherson-Final.pdf; 140126-Chronology-Shade-UsePermits-Appeal-Final.pdf

Liza Tamura  
City Clerk  
City of Manhattan Beach

Via Email,

Ms. Tamura,

Please include the email below and its four attachments [also attached], as exhibits to the staff report, for the forthcoming appeal on September 2 of Reso 14-07 for Shade Hotel.

Thanks,

Don McPherson  
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Cell: 310 487 0383  
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**From:** Don McPherson [<mailto:dmcphersonla@gmail.com>]  
**Sent:** 25 August, 2014 8:19  
**To:** Amy Howorth ([ahoworth@citymb.info](mailto:ahoworth@citymb.info)); Wayne Powell ([wpowell@citymb.info](mailto:wpowell@citymb.info)); Mark Burton ([mburton@citymb.info](mailto:mburton@citymb.info)); Tony D'Errico ([tderrico@citymb.info](mailto:tderrico@citymb.info)); David Lesser ([dlesser@citymb.info](mailto:dlesser@citymb.info))  
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**Subject:** Appellants Input for Shade Hotel Appeal, September 2

City Council  
City of Manhattan Beach

Via Email

**Subject:** Appellants Input for Appeal of Resolution No. PC 14-07, Shade Hotel, 2 September 2014

Mayor Howorth and Councilmembers,

This email and attachments shall serve as our written input for the subject appeal, as follows:

- The 1<sup>st</sup> and 2<sup>nd</sup> attachments comprise our requested modifications to Reso 14-07 and the exhibits thereto;

- The 3<sup>rd</sup> attachment provides the previously submitted letter from Strumwasser & Woocher, regarding the requirement for the city council to conduct the appeal as a de novo hearing; and,
- The 4<sup>th</sup> attachment provides a chronology of Shade Hotel, from the 2002 Metlox Master Use Permit through 2013.

I briefly address these three items.

### **Appellants Input.**

For the September 2 appeal hearing, we will focus on the two problems that will adversely impact the neighbors the most, namely:

- Extending alcohol consumption by the public in the Green Room to 2 AM every day, from the current 11 PM/midnight hours; and,
- Failing to implement doors to close the terrace south exit, as required for effective noise mitigation by the city acoustic expert.

The extension of hours to 2 AM for consumption of alcohol by public patrons will have profound impacts on the adjoining residential neighborhood, during hours after midnight.

At the May 28 meeting, the planning commission introduced this new entitlement after closing the public hearing. Consequently, until this appeal, we have not had the opportunity to oppose alcohol consumption by the public in Shade Hotel until 2 AM every morning.

Regarding closure by doors of the terrace south exit, the city acoustic expert, Behrens and Associates, requires this mitigation measure to obtain sufficient reduction of noise to be effective in abating disturbances in the adjoining residential neighborhood. Our acoustic expert, Medlin & Associates, concurs with Behrens.

City staff has opposed closing the terrace south exit, since September 2010, when the city council approved the now-expired 2010 CUP. Staff has relied on a provision in the state building code, Section 1029, which as of the 2013 code, no longer applies to Shade Hotel. Staff has not provided any explanation why they continue to oppose closing the terrace south exit.

### **Strumwasser & Woocher Letter Regarding De Novo Hearing.**

The planning commission had no evidence before them, when approving the new entitlement for public patrons to consume alcohol in Shade Hotel until 2 AM every morning. In order to fairly consider our opposition to this dramatic increase in intensity, the city council must conduct the appeal as a de novo hearing.

### **Shade Hotel Chronology.**

The attached chronology for Shade Hotel may assist the city council to understand the long and tortuous history of travail experienced by the neighbors. The chronology reads as a standalone document, but cites many exhibits, which councilmembers can find somewhere in their packets.

### **Conclusions.**

We propose only a few changes to Reso 14-07, but they will make the difference between abating the disturbances versus making them more intensive, especially during hours after midnight.

On Friday August 29, we will submit a critique of the staff report, which will include a redlined version of our two modifications to Reso 14-07.

Thanks for considering our appeal,

Don McPherson  
1014 1<sup>st</sup> St, Manhattan Beach CA 90266  
Cell: 310 487 0383  
[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

Attachments: Four

**APPEAL OF 2 AM PUBLIC ALCOHOL CONSUMPTION AND INEFFECTIVE TERRACE MITIGATION  
SHADE HOTEL APPEAL, 2 SEPTEMBER 2014**

**SUMMARY.**

Resolution No. PC 14-07 for Shade Hotel has serious flaws, as outlined in our June appeal filing. [Exhibits 1 & 2] We appreciate, however, that the planning commission and Mr. Zislis did made some progress to address the neighbors' concerns.

Nevertheless, the neighbors have suffered for nine years as guinea pigs in an approach based on, "*Let's see if this works.*" The time has come to get it right, founded on the administrative record, any and all new evidence, and the law.

For the September 2 appeal hearing, we will focus on the two problems that will adversely impact the neighbors the most, namely:

- Extending alcohol consumption by the public in the Green Room to 2 AM every day, from the current 11 PM/midnight hours. [Condition 19, Page 9 in Exhibit 1 Reso 14-07]; and,
- Failing to implement doors to close the terrace south exit, as required for effective noise mitigation by the city acoustic expert. [Condition 2(E), Page 6 in Exhibit 1]

**Green Room 2 AM Alcohol Service.**

Mr. Zislis did not apply for extension of alcohol-service hours in the Green Room. After closing the public hearing on May 28, however, the planning commission first introduced their new condition. Consequently, the public had no opportunity to oppose the Green Room serving the public with alcohol for hours after midnight every day. When hearing that, we could only sit there mute, in dumbfounded depression.

In Exhibit 1 Reso 14-07, the Condition 19 table of operating hours simply states that the Green Room can operate "*24/7 - 24 hours a day, seven days a week.*" To comprehend that this condition permits consumption by upwards of forty public patrons in the Green Room until 2 AM, one must recognize that the venue has no other operating restrictions imposed by Reso 14-07 or the Metlox Master Use Permit.

This extension of alcohol-fueled partying to 2 AM will cause profound impacts on the residential neighborhood, for hours after midnight, as summarized in the Discussion below.

**No Closure of Terrace South Exit, as Required by City Acoustic Expert.**

During our negotiations in April and May, Mr. Zislis appeared amenable to closing the terrace south exit with a combination of doors and a sound-absorbing vestibule open to the west. In exchange, we agreed to extend terrace operating hours to midnight every day. As approved, Reso 14-07 closes the terrace at 10 PM weekdays and 11 PM weekends.

Currently, the Exhibit 3 2005 CUP at Finding L requires end of food and alcohol service on the terrace after breakfast, 10 AM Monday-Friday and 11 AM Saturday-Sunday. In contrast, Shade operate the terrace to 11 PM every day.

Mr. Zislis reported to us, however, that staff insists on keeping the terrace south exit open. They have maintained this position since shortly after approval of the now-expired 2010 CUP, approved by the city council in September 2010.

In June 2013, we met with Director Thompson on this issue. As an explanation, he gave us a copy of Section 1029 in the 2010 state building code, which required emergency access to the three guest rooms overlooking the terrace. In the 2013 state building code, that section no longer applies. So, why does staff still oppose closure of the terrace south exit?

**APPEAL OF 2 AM PUBLIC ALCOHOL CONSUMPTION AND INEFFECTIVE TERRACE MITIGATION  
SHADE HOTEL APPEAL, 2 SEPTEMBER 2014**

**DISCUSSION.**

**Extension of Alcohol Consumption to 2 AM Every Day.**

Extending Green Room alcohol consumption to 2 AM will have the following impacts on the adjoining residential neighborhood, considering that Condition 19 in Reso 14-07 permits unrestricted alcohol service to the public in that venue:

- For a couple hours after midnight, scores of public patrons, many intoxicated, will come and go through the front entrance facing Ardmore residences and via the 12<sup>th</sup> St walkway, with line of sight to homes up the 12<sup>th</sup> St hill southeast of Shade;
- Patrons will continue to leave until well after 2 AM, using the valet service outside the front door, a well-established source of disturbances, while they loudly wait for their cars; and,
- The presence of so many patrons using the Green Room until 2 AM will render law enforcement of closing hours for the Zinc Lounge and the terrace impossible.

The Exhibit 4 Shade 2<sup>nd</sup> floor plan at Page 2 depicts the Green Room located at the head of the stairs from the lobby, directly above the Zinc Lounge on the 1<sup>st</sup> floor, and between the Courtyard and the three guest rooms overlooking the terrace.

Prior to Reso 14-07, the Exhibit 3 2005 CUP and the Exhibit 5 2002 Metlox Master Use Permit referred to the 'Green Room' as the 'Meeting Room.'

Finding L in the Exhibit 3 2005 CUP states, "*No changes to the previously approved hours of operation are proposed for either the alcohol sales or the special events.*" Finding J extended "full liquor" service to the Green Room, namely the Type 47 ABC license, which includes distilled spirits.

The Exhibit 5 Metlox Master Use Permit, Reso 5770, states at Condition 28, "*The Inn may provide wedding, party, and other special event services in their Courtyard, **Meeting Room**, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday and Saturday.*" [Emphasis added]

Hence, the combination of the 2005 CUP and the 2002 Metlox Master Use Permit currently limits alcohol service in the Green Room to 11 PM for daily operations, but permits a midnight closing for special events on Friday and Saturday.

The Exhibit 6 draft Reso 14-07 included in the staff report for the May 28 hearing, at Condition 19, limited Green Room closing to midnight, or before. Consequently, at that hearing, public attendees had no knowledge that after their testimony, the planning commission would increase Green Room hours to 2AM.

Reso 14-06 reverses a decades-long practice of the city reducing closing times for nightclubs. We find that unconscionable.

**Staff Opposition to Terrace South Exit Doors, as Required by City Acoustic Expert.**

The city acoustic expert, Behrens, and our acoustic expert Medlin & Associates have independently concluded that effective mitigation of terrace noise requires closure of the terrace south exit by doors.

The Exhibit 7 staff report at Page 3 & 4 for the April 23 hearing states:  
"*The report [Behrens's report, Exhibit 8] concludes that **a door on the Terrace entrance and***

**APPEAL OF 2 AM PUBLIC ALCOHOL CONSUMPTION AND INEFFECTIVE TERRACE MITIGATION  
SHADE HOTEL APPEAL, 2 SEPTEMBER 2014**

*new upgraded sound rated curtains are the only really effective and clearly significant noise mitigation improvement.” [Emphasis added]*

At the April 23 hearing, Behrens’s expert acoustic analyst, Tom Corbishley, testified: *“The end result is, that the only real effective mitigation measure we looked at this time was a combination of the upgraded acoustic curtains **and that in combination with the door, would be very effective.**”* [Video: 02:32:12 hh:mm:ss; Emphasis added.]

We engaged an acoustic expert to evaluate the mitigation measures for Shade Hotel. [Exhibit 9] On Page 1 of their letter to the city council, Medlin makes the following findings:

- “1) We concur with the Behrens report regarding the necessity of doors for the south terrace entrance;*
- 2) The 5 to 7 decibel reductions predicted by the report in the absence of these doors will not provide substantial relief for nearby residents;*
- 3) Noise-abatement in the Zinc lounge has been misrepresented, particularly with regard to the use of the “STC” rating; as no partition exists here, the STC rating is meaningless.”*

Medlin concludes in their letter to the city council:

*“In summary, we recommend heeding the advice of the city’s acoustical consultant in order to obtain maximum noise relief for nearby residents.”*

**Staff Incorrectly Asserts State Code Prohibits Terrace Closure by Code Compliant Doors.**

Staff asserts that state code prohibits closure of the terrace south exit. They base their theory on Section 1029, which no longer applies to Shade. To provide access to the rooms overlooking the terrace, however, this provision would not preclude doors for exit outside.

To find an example of compliant emergency access for interior rooms that uses external doors, look no further than the eight rooms that overlook the Courtyard, as depicted in the Exhibit 4 plans for the 1<sup>st</sup> and 2<sup>nd</sup> floors. The city approved emergency access for those rooms, which unlike the terrace, require guests to traverse hotel hallways to reach exit doors.

We will further address the terrace south exit issue in our rebuttal of the staff report.

**CONCLUSIONS.**

Resolution 14-07 approves alcohol consumption in the Green Room by up to 44 public patrons until 2 AM, who will cause disturbances in the adjoining residential area for hours after midnight. Please delete this travesty and restore midnight closing to the Green Room, consistent with Condition 19 in the draft Reso 14-07 reviewed by the public, Exhibit 6.

The city acoustic expert requires closure of the terrace south exit by doors, for effective noise mitigation. City staff opposes that closure.

The city council has two options for this issue:

- Find a way around the staff objections, thereby enabling effective mitigation of terrace noise and operation to midnight every day, as we and Mr. Zislis have discussed; or,
- Accept staff objections, with result the terrace must operate pursuant to the 2005 CUP, which requires closing 10 AM Monday-Friday and 11 AM Saturday-Sunday. Without retaining these conditions imposed by the 2005 planning commission, the council cannot make the finding that Shade Hotel will not adversely impact the adjoining residential area.

**EXHIBIT 1. RESOLUTION NO. PC 14-07 [THE "RESO 14-07"]**

**<>SEE 2 AM END OF ALCOHOL SERVICE FOR GREEN ROOM AT  
CONDITION 19, PAGE 9**

**<>SEE OPEN ACCESS IN CURTAIN OVER TERRACE SOUTH EXIT  
AT CONDITION 2(E), PAGE 6**

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**RESOLUTION NO. PC 14-08**

**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, LLC ("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 12, 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. An Amendment to the Master Use Permit was approved in 2010, on appeal, through City Council Resolution No. 6275, but it was never implemented and has since expired.
- F. The Applicant's initial application requested 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 disabled access door), on the Terrace; sound glass enclosure on the south side t corner, sealing of "gaps", acoustic absorbent panels and "clouds" on the ceiling , and curtains.
  - 2. Full Food Service and Marketing: Throughout the entire Hotel, allow breakfast, lunch and dinner service open to all. Increase hours of operation in the Zinc Bar and Lobby, the Terrace, Courtyard and Skydeck to also allow daytime and late night service daily. Allow posting of menus in front of the Terrace, and advertising, marketing and promotion of the full food service and the Zinc Bar and Lobby.
  - 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. Skydeck (roof deck): Allow later service of alcohol on the Skydeck; currently alcohol service 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 on the Terrace; new decorative metal shade awnings on the south side , curtains surrounding, and lights on support posts. New fiberglass canopy over the existing metal arches at the front entry off of Valley Drive.

- G. In response to comments from the Commission, staff and the public, the Applicant has modified the project as follows:
1. A front door vestibule in lieu of a revolving door
  2. 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. Limited 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.
  3. The Terrace occupancy will remain at 47 occupants, not increased to 90.
  4. The proposed fiberglass canopy over the existing metal arches at the front entry off of Valley Drive will not be installed.
  5. Replace the existing non-acoustic curtains surrounding the Terrace with acoustic curtains to mitigate noise.
- H. 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.
- I. 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, showing 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.



- 1 J. The property is located within Area District III and is zoned Downtown Commercial. The properties  
2 to the west and south are also zoned Downtown Commercial, the property to the north is zoned  
3 Public and Semipublic, and the property to the east is zoned Open Space, with Single Family  
4 Residential and High Density Residential to the east past Valley and Ardmore Drives.
- 5 K. The General Plan designation for the property is Downtown Commercial.
- 6 L. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community as  
7 a hotel offering first-class accommodations to visitors. The hotel may also offer special event,  
8 function, food, and other similar support services as secondary uses, subject to conditions.  
9 Marketing and promotion of the hotel shall be consistent with these uses as provided in the  
10 conditions.
- 11 M. Resolution No. PC 05-08 approved an Amendment to a Master Use Permit, to allow modifications to  
12 the previously approved alcohol sales and special events and describes the current approved  
13 business operations and project as follows: Breakfast Service in the Living Room (Zinc Bar and  
14 Lobby), Porch (Terrace), and/or Courtyard from 6:00 AM to 10:00 AM Monday-Friday and 6:00 AM-  
15 11:00 AM Saturday and Sunday. The "Wine Bar" (Zinc Bar) to operate in the evenings from 5:00 PM  
16 to 11:00 PM daily, with flexibility for earlier hours based on the needs of the customer. Wedding,  
17 party, and other special event services in the Courtyard, Meeting Room (Conference/Green Room),  
18 and Living Room, as a secondary service to the primary Inn use. These types of events are limited  
19 to 6:00 am to 11:00 p.m. Sunday through Thursday, and 6:00 am to 12:00 am (mid-night) Friday  
20 and Saturday. The availability of the Inn (Shade Hotel) for special events shall not be marketed as  
21 the primary use. The Hotel may provide full liquor service throughout the Hotel, including self-  
22 service in room "mini-bars", and a portable bar for special events. The service of alcohol at the  
23 Hotel shall be in conjunction with food. The hours of food service, and the associated alcohol  
24 service, shall be consistent with the project description, which is generally breakfast, evening  
25 appetizers and for special events. The Wine Bar shall limit its food menu to appetizers or "small  
26 plates" (or "tapas"), to qualify as a "bonafide eating place" as required by the ABC Type 47 license.  
27 The Wine Bar shall provide food service but shall not operate as a full scale "restaurant". Breakfast  
28 may be served daily in the Living Room, Porch, and/or Courtyard. Shade Hotel shall not post any  
29 drink or food menus, or any drink or food signage outside of the hotel. The Sun Deck (Skydeck)  
30 shall stop regular alcohol service no later than 9:00 p.m. daily. Alcohol service at events and  
31 functions shall stop thirty minutes prior to the hotel closing hours: 10:30 p.m., Sunday – Thursday;  
32 11:30 p.m., Friday and Saturday.
- 33 N. Four independent acoustics analyses were conducted by Don Behrens & Associates, two under the  
34 direction of the Community Development Department. The first reports, dated September 30 and  
35 October 7, 2013, are continuous Sound Monitoring Reports from three residential locations across  
36 the street from Shade Hotel to the east on Valley Drive. The reports continuously recorded the noise  
37 received by these properties from Friday September 20 through Friday October 4, 2013. The  
38 reports indicate that the average hourly sound levels in the area range between a low of about 35 to  
39 47 dBA, and a high between about 51 to 69 dBA. The highest levels of noise occur during the  
40 daytime, typically 9:00 AM to 7:00 PM, and the lowest levels of noise typically occur between 2:00  
41 AM and 4:00 AM. The Shade Hotel is not shown to significantly alter the noise levels in the area.  
42 The noise from the Shade Hotel does not exceed the objective noise standards in the Manhattan  
43 Beach Municipal Code (MBMC); the subjective standard was not evaluated in the reports. The  
44 actual noise measurements and continuous noise monitoring was conducted during several large  
45 events on the Skydeck, in the Courtyard, and in the Lobby.
- 46 O. A report dated February 4, 2014 was submitted by the Applicant to evaluate certain noise mitigation  
47 measures, based on the proposed architectural plans, dated December 10, 2013. The report  
48 provides an assessment and recommendations for the Applicant's proposed noise mitigation  
49 measures and indicates a noise reduction of up to 6 dBA at the residences, with the south side  
50 Terrace noise mitigation being most effective. Three-dimensional modeling of noise to assess  
51 various mitigation measures was also constructed.

- P. 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 13<sup>th</sup> street and emergency vehicles exit and enter from that location, sometimes onto Valley Drive.
- Q. 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 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 dBA, 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.
- R. 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.
- S. 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****Goal LU-5: Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses.**

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.

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

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

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

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

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

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

**GOALS AND POLICIES: NOISE**

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

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

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

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

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located 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.

T. 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. The following noise mitigation measures, as shown on the approved concept plans dated February 4, 2014, are required to be installed, and to include the following sound specifications: a) All new glass shall be acoustic glass rated at Sound Transmission Coefficient STC-36 or better; b) All new acoustic absorbers shall be rated at Noise Reduction Coefficient (NRC) of 0.85 or better; and, 3) All assemblies and gaps acoustically sealed:
  - A) A new front door vestibule adjacent to Valley Drive with acoustic glass. The existing laminated glass building wall may remain.
  - B) A new acoustic glass enclosure on the south wall of the southeast corner of the Terrace located from the top of the existing glass rail to the ceiling.
  - C) Acoustic sealing of all existing openings and gaps in the glass enclosure on the southeast corner of the Terrace.
  - D) Acoustic absorbent panels on the ceiling and suspended acoustic panel "clouds" below the ceiling of the Terrace.
  - E) Acoustic curtains surrounding the Terrace on all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the curtain above the access steps on the south side of the Terrace, which shall be a minimum of 7 feet 6 inches above the finished floor of the Terrace. Curtains are not required on the west side of the Terrace.
3. Public Areas-Venue (definition). Any area or space open to the public where sales, service and consumption of food, alcohol, and other 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 Holiday Open House, Charity Education Wine Events, and Chamber of Commerce 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, and notification of the Fire Department.
5. 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. 19 subject to meeting the MBMC Noise regulations, with the exception that none is permitted on the Terrace. All amplified music and sound, including live

Condition 2(E) requires an 80 sq-ft opening at the terrace south exit. For effective mitigation, the city acoustic expert requires the south exit closed by doors.

1 entertainment and live music, shall use the house system only and shall be limited to background  
2 music, including background music with DJ's, with the following exceptions:

- 3 A) Courtyard-Microphones are allowed only prior to 10 PM and shall use the house system only;
- 4 B) Terrace- Background music through house system only is allowed. No DJ's, microphones, live  
5 entertainment, live music, amplified (other than background music through house system) or  
6 non-amplified sound.
- 7 C) Skydeck- Microphones are allowed and shall use the house system only. No amplified live  
8 entertainment or amplified live music is permitted. Microphone use shall end at the same time  
9 as food and drink service, which is 9:30 PM.
- 10 D) Zinc bar and Lobby-Amplified sound for DJ's, live entertainment or live music, other than  
11 background music is permitted, provided all doors and windows leading to the outside, including  
12 those adjacent to the Courtyard, shall remain closed at all times, except when patrons and staff  
13 are entering and exiting.

14 7. House sound amplification system - The house sound amplification system and any changes shall be  
15 reviewed and approved by the Director of Community Development.

16 8. Terrace enclosure- A new acoustic glass enclosure on the south wall of the southeast corner of the  
17 Terrace located from the top of the existing glass rail to the ceiling, acoustic sealing of all existing  
18 opening in the glass enclosure on the southeast corner, acoustic absorbent panels on the ceiling  
19 and suspended acoustic panel "clouds" below the ceiling of the Terrace shall be installed.

20 The existing curtains shall be replaced within 5 months with acoustic curtains that shall surround the  
21 Terrace on all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the  
22 access steps on the south side shall have curtains that are a minimum of 7 feet 6 inches above the  
23 finished floor of the Terrace to allow required emergency access. Additionally, curtains shall not be  
24 required on the west side of the Terrace, but if they are installed, they shall not be higher than 12  
25 feet above the finished floor of the Terrace floor so that the top portion is always open to provide  
26 ventilation to meet Fire Department and Building Safety requirements.

27 The curtains shall remain open in the daytime and closed at nighttime, starting at 9:00 PM at the  
28 latest and then open again at 11:30 PM. Curtains may also be closed at anytime during inclement  
29 weather; such as cold or rain. Closure of curtains may be subject to special conditions by the Fire  
30 Department.

31 Existing heaters or other patio features shall be modified as required to meet Fire and Building  
32 Safety requirements. No temporary heaters, umbrellas, covers or other features that violate Fire and  
33 Building Safety requirements shall be placed on the Terrace. The applicant shall verify, to the  
34 satisfaction of the Fire Department, that the heaters may be operational when the curtains are  
35 closed or the heaters shall be turned off when the curtains are closed. An emergency gas shut-off  
36 for the heaters shall be installed at the ground level in an accessible location. An emergency strobe  
37 light shall be provided on the Terrace.

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

40 9. Front (East) Main Entryway- The existing primary front entrance/exit doors shall be replaced with a  
41 double-door vestibule.

42 The double-door vestibule shall include self-closing doors, or a similar device or door hardware, so  
43 that doors close automatically instead of remaining open. . The vestibule shall be large enough to  
44 allow gurney access. Between 10:00 PM and 6:00 AM both sets of doors will remain in the  
45 automatic closed position and not propped open. This is to mitigate noise from escaping out of the  
46 front door to the east.

47 The doors shall meet all Building Safety, Fire and other City requirements, including but not limited  
48 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. Zinc bar and Lobby interior separation wall- A separation wall or retractable partition as detailed in Finding "O." of Resolution No. PC 05-08 is not required to be installed.
12. Sound audibility- Noise emanating from the site, including but not limited to the volume of music, entertainment, group singing or group voices, whether or not amplified, shall comply with Section 5.48.140 of the MBMC and the California Penal Codes. All doorways and windows shall remain closed at all times during special events or functions in indoor areas after 10:00 PM.
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, which shall be subject to conditions imposed by the Community Development Director.
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 PM.
16. Exterior Doors- All exterior doors and windows to the public areas of the hotel facility shall be closed after 10:00 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. 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) Outdoor Public Areas/Venues- Terrace and Courtyard
    - a) 30 minutes prior to closed- No sales or service of alcohol, food or any drinks.
    - b) Closed- No sales, service or consumption of alcohol, food or any drinks. At closed time, all drinks, food and other associated items shall be removed. Music and/or amplification shall be turned off or end, and lights turned up or turned off. All areas vacated, except staff may remain for one hour after closed.
  - B) Outdoor Public Area/Venue- Skydeck
    - a) 60 minutes prior to closed- (9:30 PM) No sales or service of alcohol, food or any drinks.
    - b) 30 minutes prior to closed- (10:00 PM) Any music, and/or amplification shall be turned off or end, and lights turned up or turned off. Staff shall remind customers of the closed time.
    - c) Closed- (10:30 PM) No sales, service or consumption of alcohol, food or any drinks.. At closed time, all drinks, food and other associated items shall be removed. All areas vacated, except staff may remain for one hour after closed.
  - C) Indoor Public Area/Venue-(Zinc Bar and Lobby)

Consumption of alcohol, food and drinks is allowed up until closed time.

    - a) Closed- No sales, service or consumption of alcohol, food or any drinks at closed time. At closed time, all drinks, food and other associated items shall be removed. Background music only through the house system permitted, no DJ's or live entertainment or live music. All areas vacated, except staff may remain for one hour after closed. 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 Public Areas/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.

<u>Public Area/Venue</u>	<u>Day-to-day Operations and Special Events and Functions Hours of Operation- Opening and Closing times</u>	<u>Occupancy</u>
<u>Outdoor Public Area/Venues</u>		
<b>Terrace-</b> south side of Zinc Bar and Lobby	6 AM to 10:00 PM Sunday thru Thursday 6 AM to 11:00 PM Friday, Saturday and Sunday before Holidays	47
<b>Courtyard-</b> Special events and functions only allowed; no day-to-day operations (pass-through area only)	6 AM to 11 PM Sunday thru Thursday 6 AM to 12 AM (midnight) Friday, Saturday and Sunday before Holidays	151
<b>Skydeck-</b> roof deck	8 AM to 10:30 PM daily	92
<u>Indoor Public Areas/Venues</u>		
<b>Zinc bar and Lobby</b>	6 AM to 12 AM (midnight) daily	159
<b>Conference (Green) Room</b>	24/7- 24 hours a day, seven days a week	44

A) 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.

B) 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.

Neither Reso 14-07 nor the Metlox CUP places any restriction on use of the Green Room. Condition 19 permits the Green Room to serve alcohol to the public until 2 AM.

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 or loiter on 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 3<sup>rd</sup> 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, and for any Special Event or Function on the Skydeck that ends at 10:00 PM or later and has 50 or more people, or when required by the Fire Department. 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 food and drinks, access, windows and doors being closed, littering, loitering, occupancy limits, and any other nuisances are complied with. The Security staff shall work cooperatively, and meet periodically with the Police and Fire Departments, if requested.

*Ingress-Egress Control*

25. Valet- At 10:00 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 at 10 PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited at 10 PM. Everyone, except for registered hotel guests and disabled persons, shall be directed to the taxi stand on Morningside Drive and 13<sup>th</sup> Street, at 10:00 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. Entry-Exit Queue- At 10:00 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 customers may be directed to the Metlox Town Square area near the outdoor fireplace and fountain and be provided 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 (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. (at the southwest corner of Morningside Drive and 12<sup>th</sup> Street)
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 10:00 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.



1 30. Town Square- Special Events and functions may not use the Town Square or other Public Open  
2 Areas unless prior approval is granted by the City. The Applicant shall work cooperatively with the  
3 management company, landlord, any security personnel and the City to ensure that Shade facility  
4 patrons are not gathering in the Town Square and public areas outside of the hotel and disturbing  
5 the neighbors after the hotel public areas are closed. The doorman or other Shade employee or  
6 security shall ensure that patrons do not leave the hotel facility premises with alcoholic beverages.

7  
8 31. Front Drop Off- Vehicles occupying the drop off/driveway area in front of the hotel off Valley Drive  
9 shall not park on the curb or sidewalk or past the end of the south landscaped "island". Any  
10 temporary barricade across the driveway shall not block access to 12<sup>th</sup> Walk at the bollards. The  
11 area at Valley and 12<sup>th</sup> Walk by the bollards shall remain open, unobstructed and free of vehicles at  
12 all times, to allow for emergency vehicle access at the bollards, and vehicle access into the parking  
13 structure.

14 Food service

15 32. Food Service- The hotel may provide full food service (breakfast, lunch and dinner) on the entire  
16 Terrace. The Zinc Bar and Lobby may have up to twelve (12) seats of "spill-over" from the Terrace  
17 with full food service. Full food service may be provided in all other public areas only during Special  
18 Events and Functions. Food service, primarily small-plates, may be provided in the Zinc Bar and  
19 Lobby , and on the Skydeck only during the hours of operation. This shall not preclude 24-hour  
20 room service for food and non-alcoholic drinks, and room service of alcohol in compliance with ABC  
21 regulations. A full scale restaurant will not be provided; the primary use on the site will continue to  
22 be a hotel.

23 Marketing

24 33. Marketing-General- Marketing and promotion of the facility will be first and foremost as a hotel use.  
25 The availability of the hotel for Special Events and Functions, as well as food and the bar service,  
26 may be marketed as secondary uses, but not as the primary use. The hotel shall not advertise,  
27 market or promote drink or "happy hour" types of specials.

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

32 Procedural

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

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

37. 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 applicant signs and returns an affidavit accepting the conditions of approval. The applicant 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.
38. 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.
39. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
40. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.
41. 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.

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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:

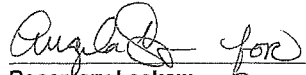
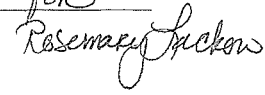
**AYES:** Chairperson Gross, Commissioners  
Ortmann, Andreani and Conaway

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Paralusz

  
Richard Thompson,  
Secretary to the Planning Commission

 for  
Rosemary Lackow,  
Recording Secretary 

**EXHIBIT 2**

**DESCRIPTION OF APPEAL: RESOLUTION NO. PC 14-07, SHADE HOTEL**

9 June 2014

City Council  
City of Manhattan Beach  
1400 Highland Ave

Delivered in Person

Subject: Appeal of Resolution No. PC 14-07 [the "2014 CUP"], Shade Hotel, 1221 N Valley Dr  
Mayor Howorth and Council Members,

We submit for your consideration, our appeal of the subject resolution. We base our appeal on the deficiencies cited in Exhibit 1, attached to this letter. First, however, we address an item of utmost importance, namely, our negotiations with Mr. Zislis to identify effective noise mitigation measures, which the approval of the resolution regrettably terminated.

**Appeal Hearing Postponement to Enable Negotiations.**

For the negotiations to succeed, we request postponement of the appeal hearing, from the statutory date of July 1, to September 2. With the 900 Club appeal postponed to August 19, it appears the council cannot hear Shade until the first meeting in September.

We progressed quite far in negotiating mitigation measures with Mr. Zislis but needed more time to bring our cordial discussions to fruition. Unfortunately, as per below, staff preempted the negotiations, by letting the resolution go to vote at the May 28 hearing, despite our request to complete with Mr. Zislis the formulation of effective noise-mitigation measures.

Staff has erroneously applied a provision in the state building code, so that it rules out enclosure of the ground-level terrace by a door at the south side. Their misunderstanding of the code section precluded the commission from considering this crucial mitigation measure.

Planning commissions in both 2009-2010 and in 2014 have identified the open-air terrace as the major source of noise that disturbs residents.

The City's acoustic contractor has emphatically stated in their recent report and in testimony, that enclosure of the terrace by a door at the south entrance constitutes the only effective measure to mitigate noise. To that desirable goal, our parallel negotiations with Mr. Zislis showed considerable promise for implementing the terrace door.

At the May 28 hearing, the commissioners initially expressed support for the terrace south door. Unfortunately, in both the subject resolution and in testimony, staff maintained that the Fire Department requires the terrace south entrance to remain open, for emergency rescue from the three rooms with balconies overlooking the terrace.

As result, the commissioners withdrew their support for the terrace south door, thereby triggering this appeal.

The Fire Department has never publically opposed a code-compliant terrace door, nor did they in a November 2013 meeting with us.

Staff claims that the terrace must remain open for emergency access to the balconies of the three guest rooms overlooking the area, pursuant to state code. For Shade Hotel, the state building code requires each room to have access to two exits, pursuant to Title 24, Part 2,

**EXHIBIT 2**

**DESCRIPTION OF APPEAL: RESOLUTION NO. PC 14-07, SHADE HOTEL**

Section 1021 and Table 1021.1. Every room in the hotel has two independent paths that access two or more of the five exits on the ground floor.

To substantiate their claim, staff cites Section 1029 in the state code, which requires emergency access for certain residential uses, but specifically does not apply to Shade. Section 1029 on emergency access applies only to residential Group R-2 and Group R-3 occupancies, but not to Group R-1 occupancy for hotels with transient occupancy, such as Shade, the Belamar or Marriott. These hotels have Group R-1 occupancy, pursuant to state code Title 24, Part 2, Section 310.3.

Consequently, the city should postpone our appeal to September. Thereby, Mr. Zislis and we can propose effective noise mitigation measures, which must include the terrace door.

At the May 28 hearing, Mr. Zislis acknowledged the inevitability of the appeal, by testifying that he would work with the residents at the city council hearing, to approve items they want. Presumably, that corresponds to the noise mitigation measures that the planning commission and staff left out of Resolution No. PC 14-07.

**Grounds for Appeal.**

The attached Exhibit 1 cites our grounds for appeal. Since January 2014, we have submitted to the planning commission documented evidence in the record that substantiates each grounds.

Pursuant to Grounds 2 and 3, feasible mitigation measures exist to soundproof the outdoor south terrace and the Zinc nightclub, but according to Finding H in the 2014 CUP, the City has chosen not to require them.

Regarding Grounds 1, staff has misstated the intent of Section 1029 in the state code for emergency access to guest rooms overlooking the terrace, so that it precludes doors to close the south entrance. The City's acoustic expert deemed it necessary to close the terrace entrance with doors. This error by staff will nullify the 2014 CUP, pursuant to MBMC 10.104.030(D)(1), *"That the permit was issued on the basis of erroneous or misleading information or misrepresentation."*

In similar violation of the municipal code, as per Grounds 9, staff failed to provide evidence to the PC that we requested, regarding occupancy limits approved for the 2005 CUP. This transgression will also nullify the 2014 CUP, pursuant to MBMC 10.104.030(D)(1).

**Conclusions.**

We appreciate your consideration of both the appeal and the request to postpone the hearing to September, so that we can complete our negotiations with Mr. Zislis.

Nate Hubbard  
1300 N Ardmore Ave

Wayne Partridge  
3520 The Strand

Don McPherson  
1014 1<sup>st</sup> St

**EXHIBIT 2**

**DESCRIPTION OF APPEAL: RESOLUTION NO. PC 14-07, SHADE HOTEL**

**EXHIBIT 1. GROUNDS FOR APPEAL.**

1. **Misrepresentation of Fire Code.** Staff has misapplied Section 1029 in the state building code, as requiring that the terrace south entrance must remain open for emergency access to the three guest rooms therein. Their error will nullify the 2014 CUP, pursuant to MBMC 10.104.030(D)(1);
2. **Door for Terrace Enclosure.** The terrace must have a door for the south entrance, to meet the noise reduction required by the City's acoustic expert, but the resolution does not require it;
3. **Soundproofing Lobby Façade.** The inadequate physical mitigation for the lobby, as specified by the resolution, reduces noise by only an indiscernible amount;
4. **Increased SkyDeck Closing Time.** The resolution increases the rooftop Skydeck closing time to 10:30 PM, from 10:00 PM in the 2005 CUP, without any offsetting noise mitigation;
5. **Violation of Parking Requirement.** Compared to the 2005 CUP, the resolution expands the Zinc Lounge to incorporate the lobby area and adds special events to both the terrace and rooftop SkyDeck, thereby increasing parking requirements by 31 spaces, in violation of the parking ordinance, municipal code chapter MBMC 10.64;
6. **Coastal Permit Amendment.** For any change in intensification of use, the Local Coastal Program requires modification to the coastal development permit for Metlox, pursuant to LCP A.96.040 and A.96.030(L). Compared, to the 2005 CUP, the resolution increases intensity by: 1) 154 more occupants in the Zinc Lounge, the terrace and the rooftop Skydeck; 2) Extended Zinc Lounge hours from 11 PM to midnight daily, terrace hours from morning breakfast to 11 PM Fri-Sat, and Skydeck hours to 10:30 PM daily; 4) Dancing throughout the hotel, rather than on the designated 15'x20' area in the Zinc Lounge; and, 5) Operation of a full-scale restaurant, with outdoor menus;
7. **CEQA Initial Study.** The aforementioned intensifications granted by the resolution require an initial study for modification of the Metlox Environmental Impact Report [EIR], pursuant to CEQA, Public Resources Code §21080(c)(2);
8. **2005 CUP Violations.** For any violations of terms and conditions in the 2005 CUP, the municipal code section MBMC 10.84.090(D) requires modification of the use permit, pursuant to MBMC 10.104.030, Revocation and Modification. The resolution fails to make the finding that Shade violates the following conditions in the 2005 CUP: 1) An acoustic wall rated at Sound Transmission Coefficient STC-50 between the Zinc Lounge and the hotel lobby; 2) Closing hours for the terrace; 3) Occupancies of 77 for the Zinc Lounge, 22 for the terrace and 45 for the rooftop SkyDeck; 4) Special events on the terrace and SkyDeck; 5) No lunch service, no full-scale restaurant and no outdoor menus; and, 6) The noise ordinance, MBMC 5.48, per two citations from the MBPD; and,
9. **Staff Failed to Provide Evidence to the PC Regarding 2005 CUP Occupancies.** Staff failed to provide the PC with evidence regarding occupancy requirements approved for the 2005 CUP. On May 19, we submitted a demand letter requiring staff to provide specific excerpts from the August 2014 building permit and the Exhibit F plans from the May 2005 staff report, regarding occupancy limits. Staff failure will nullify the 2014 CUP, pursuant to MBMC 10.104.030(D)(1).

RESOLUTION NO. PC 05-08

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

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

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

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approved alcohol sales and special events at the Shade Hotel, Metlox site, 1221 north Valley Drive in the City of Manhattan Beach.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission and therefore they will review the project and make a determine if an amendment to the Permit will be required to be processed.
- D. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- E. The following is a summary of some of the key milestones for the Metlox site:

1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site

1997/98- The City purchased the Metlox property to control development and Master Plan the site

1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.

December 1998- The City selected the Tolkin Group as a development partner

April 2001- The City Council certified the EIR

April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease

July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council

November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit


February 2003- Groundbreaking for the Metlox parking structure

January 2004- Grand opening of public parking structure with 460 parking spaces


April 2004- Shade Hotel construction commenced

September 2004- Construction of the Metlox commercial buildings started

- F. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the project at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received.



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



Community Development Department  
City of Manhattan Beach

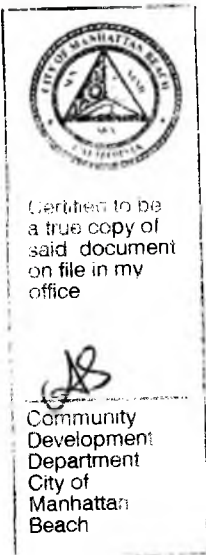
- G. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.
- H. The property is located within Area District iii and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space.
- I. The General Plan designation for the property is Downtown Commercial.

J. The proposed project is a modification of the previously approved alcohol sales for the Shade Hotel to provide high quality service to their customers consistent with the business plan for the four-star hotel, as well as to provide consistency with the State Alcoholic Beverage Control (ABC) regulations. The previous approval (Condition No. 38- City Council Resolution No. 5770) allows full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The State Alcoholic Beverage Control (ABC) regulations require a full liquor license throughout the Hotel facility (Type 47 license) that is open to the general public and includes the service of food in order to allow the in-room mini-bar license (Type 66 license). There is no ABC license, or series of licenses that would allow beer and wine only for guests, and full liquor for the mini-bars. A portable bar with full liquor (Type 68 license), for special events, is also proposed. Full liquor is proposed throughout the Hotel including the Courtyard, the Living Room which includes the Lobby and Wine Bar, the Porch, the Meeting Room and the rooftop Sun Deck. Alcohol is only allowed to be consumed on the site, it may not be taken off-site for consumption.

K. The previous approval (Condition No. 28- City Council Resolution No. 5770) also limits special events (weddings, parties, etc.) to 60 people, and the modification requests a maximum of 99 people, without approval of a Temporary Use Permit.

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

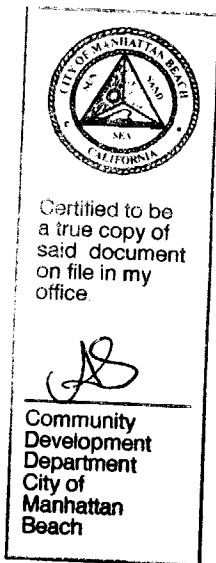
M. The primary use and purpose of Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors. The changes will make the hotel a better, more attractive facility for Manhattan Beach and a more sustainable business for its owners and investors and the city. All services of the hotel will be focused directly on its guests and event clients. All





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

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



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

**GOALS AND POLICIES: LAND USE**

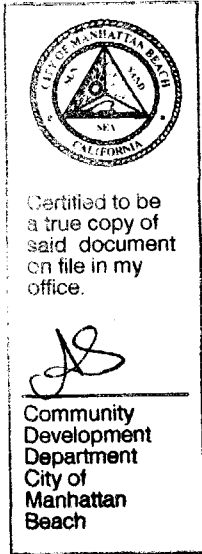
**Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.**

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

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

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

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



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

**General Conditions**

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

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

**Land Use**

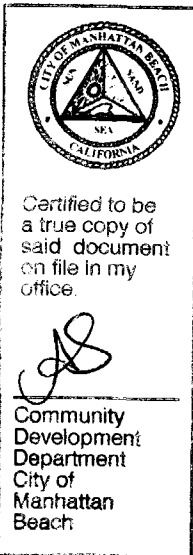
2. (This condition replaces Condition No. 28- City Council Resolution No. 5770) The Inn may provide wedding, party, and other special event services in their Courtyard, Meeting Room, and Living Room, as a secondary service to the primary Inn use. These types of events are limited to 6:00 am to 11:00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

**Alcohol**

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

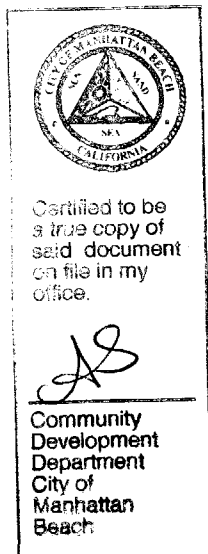
**New conditions**

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



**Procedural**

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



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


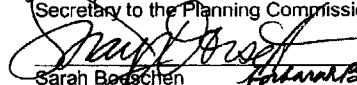

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **May 25, 2005**, and that said Resolution was adopted by the following vote:

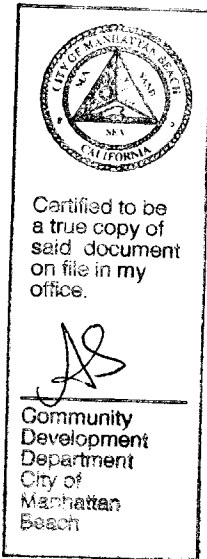
**AYES:** Chairman O'Connor, Vice-Chair Savikas, Commissioners Kuch and Simon

**NOES:** None

**ABSTAIN:** None

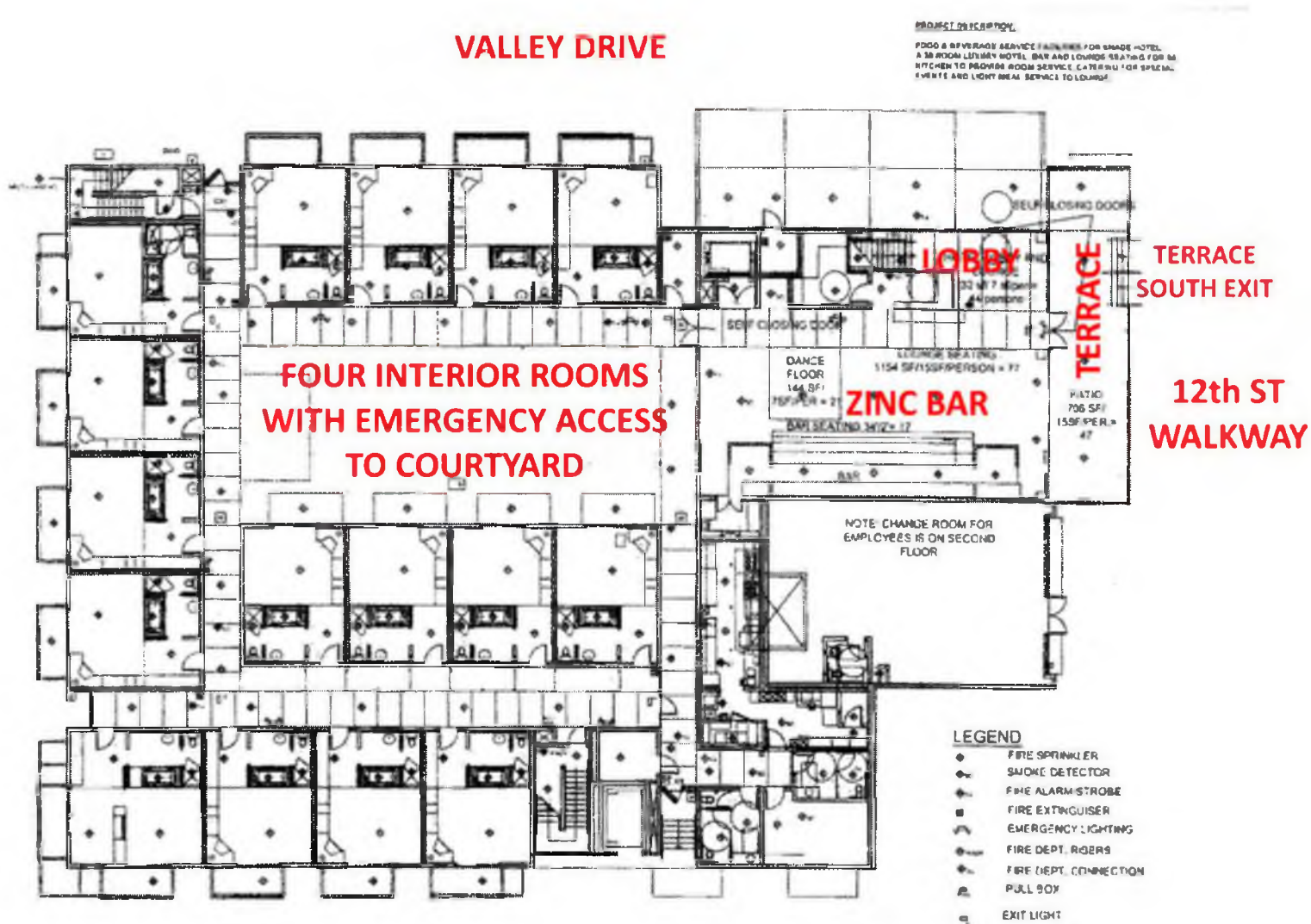
**ABSENT:** None

  
\_\_\_\_\_  
**RICHARD THOMPSON**  
Secretary to the Planning Commission  
  
Sarah Boesch  
Recording Secretary  




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# SHADE 1<sup>st</sup>-FLOOR HAS FOUR INTERIOR ROOMS WITH EMERGENCY ACCESS TO COURTYARD



**SHADE 2<sup>nd</sup>-FLOOR HAS FOUR INTERIOR ROOMS  
WITH EMERGENCY ACCESS TO COURTYARD**

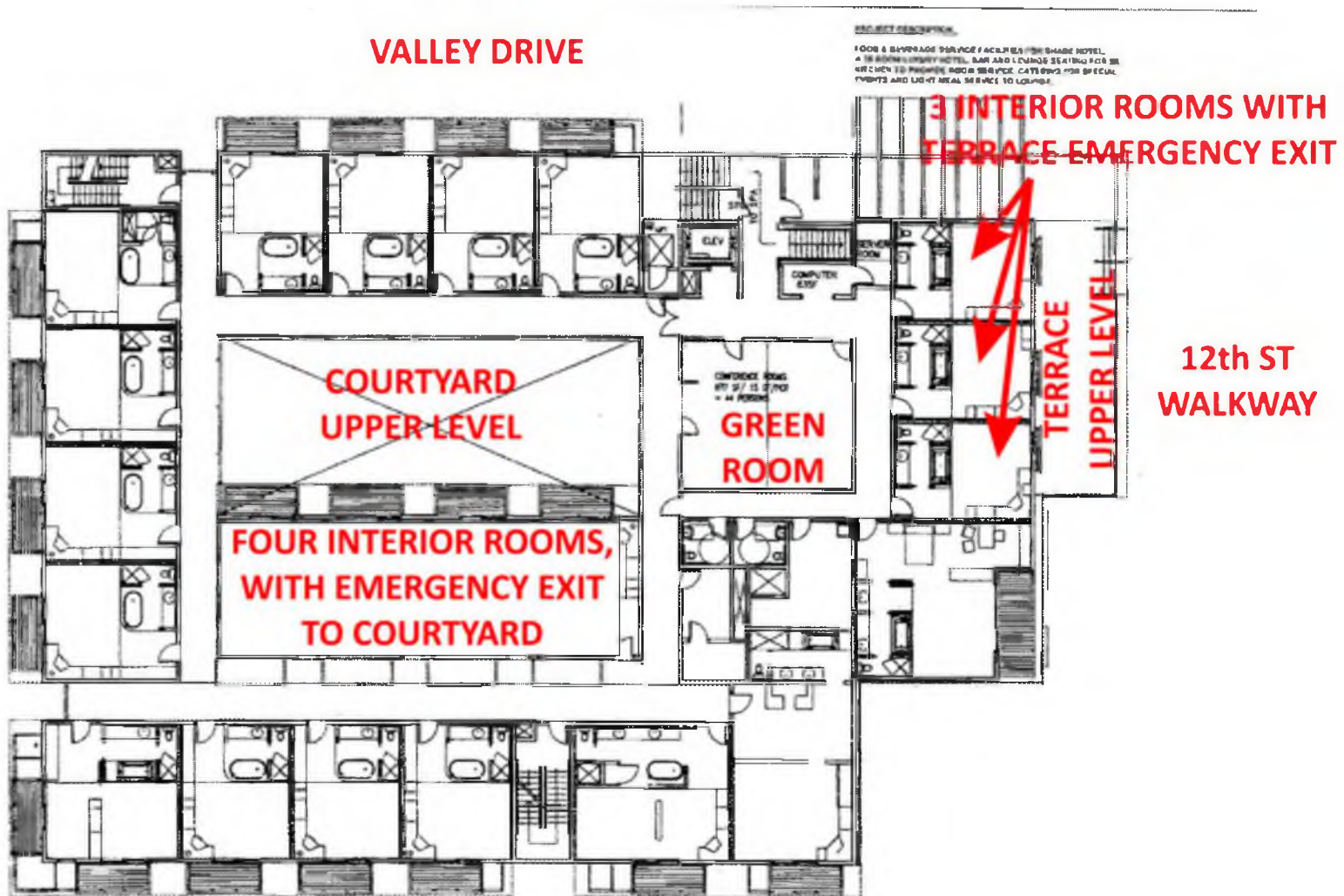


EXHIBIT 5. METLOX MASTER USE PERMIT, RESOLUTION 5770

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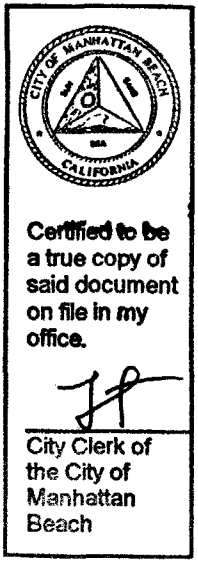
RESOLUTION NO. 5770

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

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

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

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

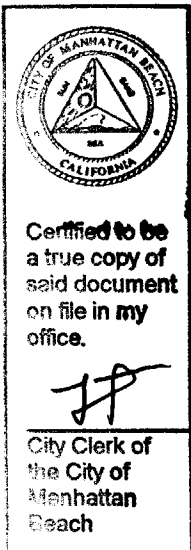




Res. 5770

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

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



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

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

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

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

**GOALS AND POLICIES: LAND USE**

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

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

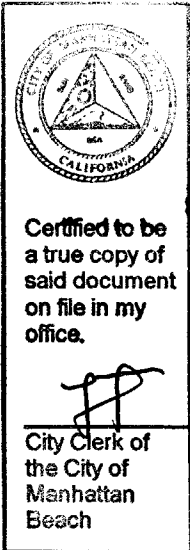
Policy 1.2: Require the design of all new construction to utilize notches, or balconies, or other architectural details to reduce the size and bulk.

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

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

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

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



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

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

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

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

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

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

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

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

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

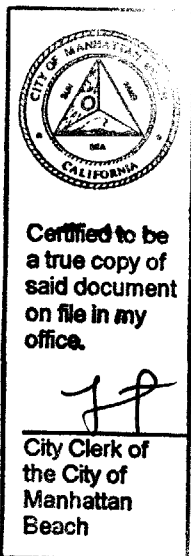
P. Based on the MBLCP Sections A.96.150 the following findings are made:  
That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program, since the project is consistent with the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

**COASTAL ACCESS POLICIES**

**A. Access Policies**

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

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



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**B. Transit Policies**

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

**II. COASTAL LOCATING AND PLANNING NEW DEVELOPMENT POLICIES**

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

**A. Commercial Development**

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

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

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

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

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

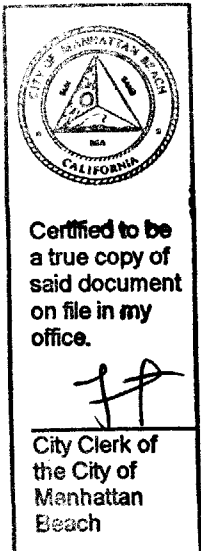
**SECTION 2.** The City Council of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit and Coastal Development subject to the following conditions.

**General Conditions**

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

**Site Preparation/Construction**

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

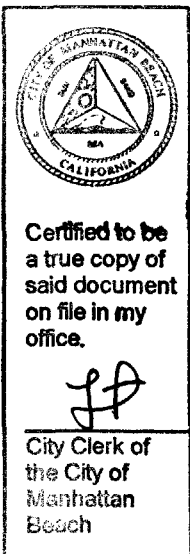


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3. During the demolition and construction phases of development, a daily clean-up program for all areas affected by the project shall occur, including the pickup of all debris (utilizing an approved trash dumpster or other trash control method) at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

**Operational**

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



**EXHIBIT 5. METLOX MASTER USE PERMIT, RESOLUTION 5770**

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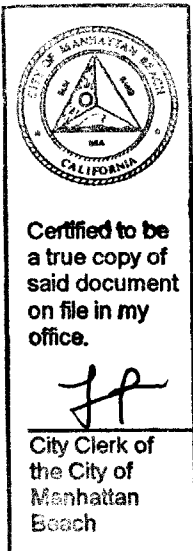
- 1 14. The operators of the facility shall police the property, and all areas immediately adjacent to the businesses, during the hours of operation to keep it free of litter.
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- 3 15. The operators of the facility shall provide adequate management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

**Public Works**

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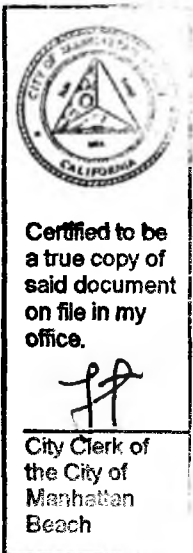
**Land Use**

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



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

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

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

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

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

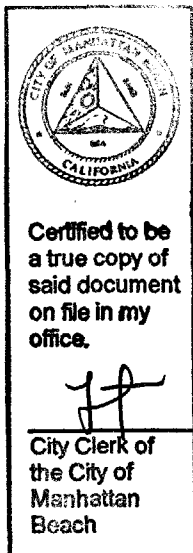
36. A site landscaping plan, utilizing drought tolerant plants to the extent feasible, shall be submitted for review and approval. The landscaping shall be in compliance with the Downtown Design Guidelines and the requirements of the MBMC. All plants shall be identified on the plan by the Latin and common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

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

**Alcohol**

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

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



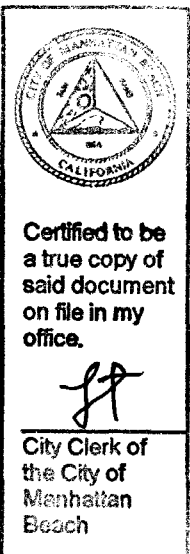


**Entertainment**

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

**Procedural**

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



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**Mitigation Measures (CEQA)**

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

51. AESTHETICS/VIEWS

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

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

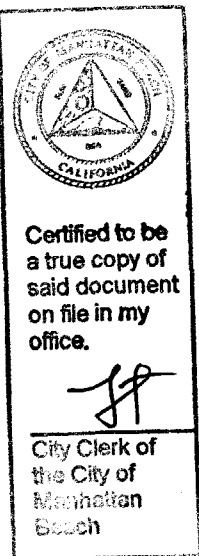
52. Air Quality

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

53. PUBLIC SAFETY

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

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



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

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

54. RISK OF UPSET

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

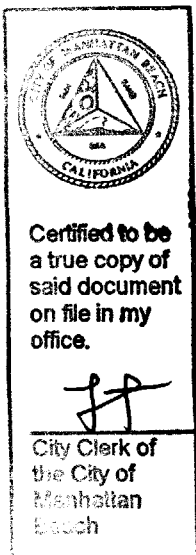
- A. Comprehensive surveys for asbestos containing materials (ACMs), lead based paint, and Poly Chlorinated Biphenyls (PCBs) shall be conducted by a registered environmental assessor for each existing on-site structure to be demolished or renovated under the proposed project. ACMs, lead based paint,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

55. TRANSPORTATION AND CIRCULATION

REQUIRED MITIGATION MEASURES

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

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



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

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

RECOMMENDED MITIGATION MEASURES

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

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

56. HYDROLOGY/WATER QUALITY

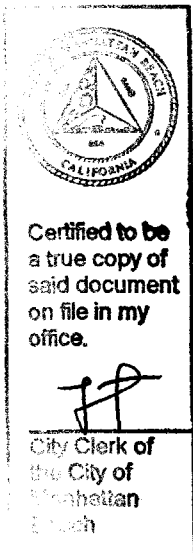
The following mitigation measures would ensure water quality impacts would be less than significant:

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

57. NOISE

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

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



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

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

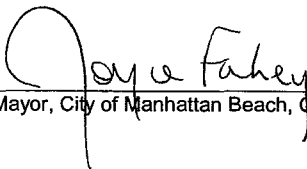
**SECTION 4.** This resolution shall take effect immediately.

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

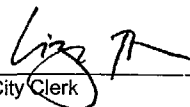
**SECTION 6.** The City Clerk shall make this Resolution reasonably available for public inspection within thirty (30) days of the date this Resolution is adopted.

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of July 2002.

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

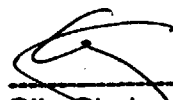
  
 Mayor, City of Manhattan Beach, California

ATTEST:

  
 City Clerk



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

  
 City Clerk of the City of Manhattan Beach, California

THE DRAFT RESO 14-07 REVIEWED BY THE PUBLIC LIMITED  
GREEN ROOM CLOSING TO MIDNIGHT. SEE CONDITION 19, PAGE 13

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, LLC (“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:

**ATTACHMENT A**  
**PC MTG 5-28-14**

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 Valley 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. 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, insomuch 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, showing 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 (mid-night) 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.

- O. 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 13<sup>th</sup> 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 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 dBA, 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.

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

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

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

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

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

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

## GOALS AND POLICIES: NOISE

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

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

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

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

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located 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. The following noise mitigation measures, as shown on the approved concept plans dated February 4, 2014, are required to be installed:
  - A) Revolving front door or a vestibule adjacent to Valley Drive 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) A laminated sound glass enclosure on the southeast corner of the Terrace located from floor-to-ceiling.
  - D) Acoustic sealing of all existing openings and gaps in the glass enclosure on the southeast corner of the Terrace.
  - 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 all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the curtain above the access steps on the south side of the Terrace, which shall be a minimum of 7 feet 6 inches above the finished floor of the Terrace. Curtains are not required on the west side of the Terrace.
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 at, 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. 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 MBMC 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 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.
- 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- 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 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- 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 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 and 6:00 AM. Between 6 AM and 10 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. Zinc bar and Lobby interior separation wall- A separation wall or retractable partition as detailed in Finding “O.” 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 PM.
16. Exterior Doors- All exterior doors and windows to the public areas of the hotel facility shall be closed after 10:00 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. 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. 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. 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.

<u>Public Area/Venue</u>	<u>Day-to-day Hours of Operation- Opening and Closing times</u>	<u>Special Events and Functions Hours of Operation- Opening and Closing times</u>
	<b><u>(See Closed regulations in Condition #18): No sales, service or consumption of Alcohol, food or drinks after Closing Time</u></b>	
Zinc Bar and Lobby	6 AM to 12 AM (midnight)	6 AM to 12 AM (midnight) Sunday-Thursday
Terrace/Porch- south side of Lobby outdoor	6 AM to 10:30 PM	6 AM to 10:30 PM
Conference Room (Green)	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) Friday-Saturday
Skydeck-outdoor	8 AM to 10:30 PM	8 AM to 10:30 PM

Draft Reso 14-07 reviewed by the public limited the Green Room to midnight closing

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. Consumption of alcohol, food and drinks is allowed up until closing time.

c) 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.

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

e) 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 3<sup>rd</sup> 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, 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 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. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited after 10 PM. Everyone, except for registered hotel guests and disabled persons, shall be directed to the taxi stand on Morningside Drive and 13<sup>th</sup> 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. Entry-Exit Queue- After 10:00 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 customers may be directed to the Metlox Town Square area near the outdoor fireplace and fountain and be provided 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 12<sup>th</sup> Walk at the bollards. The area at Valley and 12<sup>th</sup> 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 MBMC Section 10.84.090.

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.

41. Interpretation. Any questions of intent or interpretation of any condition will 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:**

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

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**Rosemary Lackow,**  
Recording Secretary



**CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

**TO:** Planning Commission

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

**DATE:** April 23, 2014

**SUBJECT:** Consideration of a Master Use Permit Amendment and Possible Modifications, Including but not Limited to: Noise Mitigation Measures, Hours of Operation, Food Service, Special Events, and Alcohol Service, 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, DISCUSS AND PROVIDE DIRECTION.**

**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, as well as to present several draft Resolutions and conditions, prepared by staff, the applicant and the residents, for the Commission to review, discuss and provide direction. Staff has held several meetings with various groups and individuals as discussed below.

The original request for an Amendment to the existing Master Use Permit from the Shade Hotel is outlined below.

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.

There are a few revisions to the original applicants request, include retaining the existing Terrace curtains instead of replacing with acoustic curtains, retaining the current occupancy on the Terrace at 47 instead of increasing to 90, and no new fiberglass canopy over the existing metal arches at the front entry off of Valley Drive.

## **DISCUSSION**

### **Planning Commission meeting March 12, 2014**

At the last meeting, staff provided a status report and update on the application. The Commission requested that the Acoustical Engineer from Behrens and Associates be present at the April 23<sup>rd</sup> meeting, and provide a presentation and respond to questions from the Commission. The consultant's report is attached as Exhibit E and a representative will be at the meeting. Additionally, representatives from the Police and Fire Departments as well as the Building Official will be at this meeting to respond to Commission questions. The residents and Commission asked if the staff report for tonight's meeting could be posted early. All of the information for the report was not received until Wednesday the 16<sup>th</sup>, so the report will be posted on the City website and distributed on Thursday the 17<sup>th</sup>.

### **Building Safety, Fire and Police input**

Draft conditions (Exhibit A) were prepared by Planning staff for review and input from the Building Safety Division, Fire and Police Departments, as well as the City Attorney's office. Staff meet with all of the other Departments several times and revised the conditions based on their input. The City Attorney's office also provided comments and revisions that will be incorporated into the final Resolution. Staff will continue to work closely with all Departments to ensure that any conditions developed are realistic and enforceable. Representatives from all the Departments will be present at the meeting to respond to Commission questions.

The preliminary plans that were submitted by the applicant to plan check for the revolving door and the Terrace modifications were returned to the City and the applicant with comments and corrections from the City's outside consultants for Building and Fire commercial plan check. The applicant is currently in the process of reviewing and responding to those comments and corrections and will work with the plan check consultants to address and resolve any issues. 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, so this review is limited. The review strives to focus on if there are any aspects of the project that could be potentially infeasible due to Building Safety, Fire and other Code requirements. Additionally, the applicant has hired a structural engineer to evaluate modifying the structural column at the front of the hotel outside of the main entry off of Valley Drive. This would allow adequate room for a vestibule, instead of a revolving door, as well as the required Building Safety and Fire access. The applicant has indicated that if needed they will proceed with this evaluation after the direction from this Planning Commission meeting is provided.

At the last meeting the Commission asked for more information on the "zero tolerance" enforcement policy of the Police Department. In September 2012, the swing shift Watch Commander met with Shade Hotel management to discuss Police Department protocol and their zero tolerance position regarding verified noise complaints. Basically the "zero tolerance" policy means that if there is a violation of the noise ordinance Police Officers will issue a citation instead of just a warning. Police staff proactively patrol the neighborhood occasionally during evening hours, particularly on Thursday through Saturday. The Police will continue to maintain a "zero tolerance" policy responding to any neighbor complaints in a timely manner.

### **Noise consultant**

The noise consultant, Behrens and Associates, prepared a Noise Mitigation Evaluation Report that evaluates options for the Terrace and the front entrance to mitigate noise. This evaluation is attached as Exhibit E. These improvements would be in addition to those already evaluated in the February 4, 2014 report (Exhibit F) that included additional Terrace glass panels and sealing the existing glass panel gaps, installing acoustic material on the Terrace ceiling, and installing a revolving door and disabled access door at the main east Hotel entrance off of Valley Drive. The report indicates that when assessing noise reduction, a decrease in noise level of 3 dB is just perceptible; a decrease of 5 dB is considered clearly noticeable and a decrease of 10 dB is very significant and corresponds to a perceived halving in noise level. A minimum reduction of 5 dB must be achieved for the reduction to be considered significant. The report concludes that a door on the Terrace entrance and new upgraded sound rated curtains are the only really effective and

clearly significant noise mitigation improvement. A door alone on the Terrace entrance would possibly be a noticeable improvement. The addition of a fiberglass canopy over the existing metal arches at the front entry off of Valley Drive could have a negative impact on noise and is not recommended. Options for a vestibule in lieu of a revolving door are being further explored by the applicant and this option is anticipated to provide more noise mitigation than the revolving door. The Commission also requested that the Acoustical Engineer provide an explanation of selective hearing/selective attention. The Acoustical Engineer from Behrens and Associates will be at the meeting to address questions that the Commission may have.

This Noise Evaluation gives the Commission the ability to determine which noise mitigation measures are most effective and desirable and develop a list of conditions. The draft proposed conditions have been written to require that certain noise mitigation be installed initially, that there will then be a review for effectiveness, and if necessary additional noise mitigation measures could be required.

### **Code Noise Standards**

The Manhattan Beach Municipal Code provides two standards for evaluating noise. The first is a decibel level standards, and as an objective standard this is the standard that is used to evaluate impacts and mitigation in the Behrens reports (MBMC Section 5.48.160). A subjective, or “reasonable person standard”(MBMC Section 5.48.140) is also provided in the Code and these technical noise reports do not address the subjective standard. For land use decisions, such as this Master Use Permit Amendment, it is appropriate for the Planning Commission to consider all sorts of evidence. The Commission will consider the noise studies (the objective standards), as well as the neighbors and patrons testimony (the subjective standard). The Use Permit and General Plan purpose, findings, criteria, goals and policies should also be considered by the Commission when making the decision. Below is a link to the MBMC Section 5.48 that regulates Noise:

[http://library.municode.com/HTML/16473/level2/TIT5SAHE\\_CH5.48NORE.html](http://library.municode.com/HTML/16473/level2/TIT5SAHE_CH5.48NORE.html)

### **Applicant meetings**

Staff meet with the applicant several times to discuss the input from the Planning Commission, and proposed draft Use Permit conditions to address the comments from the Commission as well as the residents. The applicant has prepared draft conditions for the Commissions consideration attached as Exhibit B. This document was submitted just prior to the distribution of the staff report so staff has not had time to thoroughly review and comment on the proposal at this time, however the following highlights some of the key aspects of the applicants proposed conditions that differ from staff’s recommendation:

1. Closing- All areas to be vacated 30 minutes after closing time.
2. Hours of operation (closing)- Zinc bar/Lobby/Terrace-11 PM Sunday to Thursday and midnight Friday, Saturday and Sundays before Memorial Day and Labor Day.
3. Alcohol service to stop 20 minutes before closing.

The applicant also submitted an e-mail to the Commission dated April 14, 2014 attached as Exhibit D, that indicates that the existing Use Permit (PC Resolution No. 05-08), as well as the draft proposed Use Permit conditions (Exhibit A) contain restrictions that apply to Shade only and no other businesses in town. . The applicant indicates the revisions would not be acceptable to the Shade or to any hotel in town. In particular the Shade is concerned with conditions related to the hours of operation and the definition of “closing or closed” which are included in staffs draft conditions. Additionally, the applicant objects to any requirement for a Courtyard corridor wall and the related requirements regarding entering and exiting to the west that were included in the 2010 Use Permit. Staff is not proposing these two requirements in the current draft conditions.

There are only two other hotels in town that provide similar services to the Shade, with guest rooms, food service and event space. The Marriott Hotel on Parkview Avenue is not near residential and so is not a similar situation. The Belamar Hotel on Valley and Oak is adjacent to residential but their event space and restaurant/bar are oriented to the interior of the property. Staff is not aware of any noise complaints related to the Marriott or the Belamar, although in the past there have been some neighborhood parking concerns surrounding the Belamar.

**Public comments**

Staff and the Commission have received a few e-mails since the last meeting. The most recent e-mail dated April 11, 2014 that included a draft Resolution and conditions, is included as Exhibit C. In summary the conditions propose the following:

1. Further enclosure of the Terrace including double doors and a landing on the south side, and new acoustic curtains.
2. Replace the east Lobby exterior wall with acoustic glass
3. Require a new corridor wall separating the Lobby and the Courtyard and exiting through the corridor out to the west after 9:00 PM
4. New acoustic curtains in the Courtyard
5. Closing at 11 PM until all mitigation is completed then closing at midnight (except Skydeck.) Six months to complete all mitigation.

**CONCLUSION:**

The project before the Planning Commission is an Amendment to the Master Use Permit for the Shade Hotel. Staff believes that the current operations of the Hotel have minimized impacts to the neighborhood. There is no evidence of recent noise violations and the hotel management has taken steps, such as an increase in security and modified sound systems, to successfully address and mitigate issues. Staff believes that the proposed conditions are a balanced approach that capture and reflect the current hotel operations, while clarifying the provisions of Use Permit and requiring milestones to implement improvements to address concerns of the neighbors.

The objective of tonight's meeting is for staff to provide a status report and update, present draft proposed conditions, provide an opportunity for input from the applicant and the public, and for the Planning Commission to provide direction. Staff recommends that the Commission conduct the public hearing, discuss, provide direction then close the public hearing. Staff will then refine the conditions, including input from the City Attorney, and bring back those revisions to the Planning Commission with a Resolution for final review and action.

**EXHIBITS:**

- A. City's draft conditions-April 16, 2014
- B. Applicants draft conditions- April 16, 2014
- C. Residents draft Resolutions, conditions, e-mail and attachments- April 11, 2014
- D. Applicant's e-mail- April 14, 2014
- E. Behrens and Associates Noise Mitigation Report- April 16, 2014
- F. Behrens and Associates Noise Mitigation Report- February 4, 2014
- G. Project concept Plans- February 4, 2014

- c: Mike Zislis- Shade Hotel
- Katie Kruft 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
- Tom Corbishley, Behrens and Associates
- Quinn Barrow, Richards, Watson, Gershon
- Diana Varat, Richards, Watson, Gershon

**Behrens and Associates, Inc.**

*Acoustics, Noise and Vibration Consultants*



April 16, 2014

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

Attention: Laurie Jester, Planning Manager

Subject: Shade Hotel Noise Mitigation Evaluation Report

Dear Ms. Jester,

As requested, we have completed additional noise mitigation evaluation for the Shade Hotel, located at 1221 N Valley Dr in the City of Manhattan Beach. This report provides an assessment of mitigation measures provided in the plans dated February 19, 2014 to analyze the effective of these measures on noise levels experienced at the residential properties east of Ardmore Avenue.

This report deals with noise associated with the front entrance and south terrace of the hotel. Our previous assessment, dated February 4, 2014, addressed the effectiveness of the installation of a revolving door at the front entrance and curtains and acoustically absorptive material at the south terrace. These measures are incorporated into this analysis in addition to other proposed measures. The various mitigation measures that have been proposed for this latest analysis include sound rated curtains, an awning and an entrance door at the terrace, acoustically absorptive areas on the north wall of Petros consisting of 'Living Wall' panels and a canopy above the front entrance.

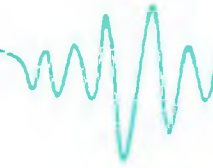
In addition, the sealing of gaps around the existing terrace wall glass panels and the installation of glass panels on one side of the interior reception desk has been proposed. The noise modeling software used for this analysis does not easily permit the assessment of these mitigation measures and these were not specifically modeled; however, this report does provide information on the expected effectiveness of these mitigation measures.

This report assesses the noise levels for the following combinations of noise sources and mitigation:

**ATTACHMENT E  
PC MTG 4-23-14**

# Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



City of Manhattan Beach

April 16, 2014

Page 2

Scenario No.	Noise Source	Mitigation Measures
1	South terrace	Acoustically absorptive terrace ceiling panels Sound rated terrace curtains
2	South terrace	Acoustically absorptive terrace ceiling panels Sound rated terrace curtains Terrace awning
3	South terrace	Acoustically absorptive terrace ceiling panels Sound rated terrace curtains Terrace awning Living wall on north façade of Petros
4	South terrace	Acoustically absorptive terrace ceiling panels Sound rated terrace curtains Terrace awning Living wall on north façade of Petros Door at south entrance to terrace
5	Front entrance	Revolving front entrance door Canopy above front entrance
6	South terrace Front entrance	Acoustically absorptive terrace ceiling panels Sound rated terrace curtains Terrace awning Living wall on north façade of Petros Revolving front entrance door
7	South terrace Front entrance	Acoustically absorptive terrace ceiling panels Sound rated terrace curtains Terrace awning Living wall on north façade of Petros Door at south entrance to terrace Revolving front entrance door

As for previous reports, this report presents both calibrated unmitigated noise maps and predicted mitigated noise maps showing the noise after the proposed mitigation measures have been installed. In addition, ‘noise difference maps’ are presented. These maps are calculated by subtracting the mitigated noise level from the unmitigated level at every point over the mapped area. They therefore show the reduction in noise with the mitigation measures installed. In this report the color scale of the difference maps has been changed to a red and blue scale to permit easier assessment of the noise reduction.

When assessing the noise reduction, a decrease in noise level of 3 dB is just perceptible; a decrease of 5 dB is considered clearly noticeable and a decrease of 10 dB is very significant and



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*Acoustics, Noise and Vibration Consultants*



City of Manhattan Beach

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corresponds to a perceived halving in noise level. A minimum reduction of 5 dB must be achieved for the reduction to be considered significant. The term ‘significant’ means that the noise reduction will be noticeable but does not necessarily mean that the mitigation measure will reduce the noise to a level where it is no longer an issue for the residents.

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

### **South Terrace Noise (Figures 1 through 9)**

The unmitigated noise map for the south terrace noise only is presented in Figure 1. This is the same noise map presented in our previous noise assessment reports for the unmitigated scenario. This noise map was calibrated to noise measurements made as part of our original 2009 noise study. Although noise levels may be lower now than at that time, these levels have been used as a basis for this latest assessment to permit a like-for-like comparison of the various proposed mitigation measures across all the studies performed since 2009.

The noise maps in Figures 2 through 9 provide the estimated noise levels and difference maps for Scenarios 1 through 4. The noise maps in Figures 2 and 3 indicate that the upgraded sound rated curtains at the terrace (Scenario 1) will reduce the noise by up to 8 dB at the residences. This represents an improvement of only 1 dB compared to the existing curtains. This reason that a larger decrease in level is not achieved is attributed to the fact that the south entrance to the terrace remains open for this scenario. For this scenario it was assumed that the curtains would have a Sound Transmission Class (STC) rating of at least 17.

The noise maps in Figures 4 and 5 indicate the installation of the awning in addition to the sound rated curtains at the terrace (Scenario 2) will reduce the noise by up to 8 dB at the residences and will therefore not produce any further reduction in sound level. This is also true of the noise levels after the installation of the acoustically absorptive living wall on the north façade of Petros (Scenario 3), for which an 8 dB reduction is also observed (see Figures 6 and 7). The absorptive wall was modeled as covering the areas of the upper and lower façades of the north wall where it would not obstruct windows or doors.

Figures 8 and 9 indicate that the addition of a door at the south entrance to the terrace (Scenario 4) would significantly improve the noise reduction. For this scenario the estimated noise reduction at the residences is 16 dB.

Although the sealing of gaps in the existing terrace glass walls has not been specifically analyzed, it is our opinion that these gaps should be sealed to give the best chance of achieving

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

City of Manhattan Beach

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the estimated sound reduction since even small holes in a wall can significantly reduce the sound reduction performance of the wall.

**Front Entrance Noise (Figures 10 through 12)**

Figure 10 provides a noise map of the unmitigated front entrance noise. The noise maps in Figures 11 and 12 indicate the installation of a canopy above the front entrance in addition to the revolving door and separate glass entrance door (Scenario 5) would reduce the noise level by 4 dB at the residences. The canopy therefore produces a slight increase in level compared to the front entrance scenario modeled in our February 2014 assessment, when the entrance was modeled without the canopy and 5 dB reduction was estimated. Further analysis of the noise levels indicates that the increase due to the canopy is approximately 0.3 dB. The change in noise reduction from 5 dB to 4 dB is due to the rounding the estimated value.

It is not possible to quantitatively assess the effect of the proposed interior glass partition at the reception desk. However, based on the size of the partition and assumed interior acoustical properties it is concluded that this partition would have little effect on the noise that would escape through the front entrance doors and windows. Due to the reflective nature of the noise inside the room, the partition would have to form a much larger partition between the entrance and the main Zinc lounge area.

**Combined Terrace and Front Entrance Noise Levels (Figures 13 through 17)**

Figure 13 shows the combined unmitigated noise levels of the south terrace and front entrance. The noise maps in Figures 14 and 15 indicate that the reduction in noise level of the combined sources due to the sound rated curtains, terrace awning, acoustically absorptive living wall and revolving front entrance door (Scenario 6) would be up to 7 dB at the residences. With the addition of an entrance door at the south terrace (Scenario 7), the noise reduction would be up to 13 dB.

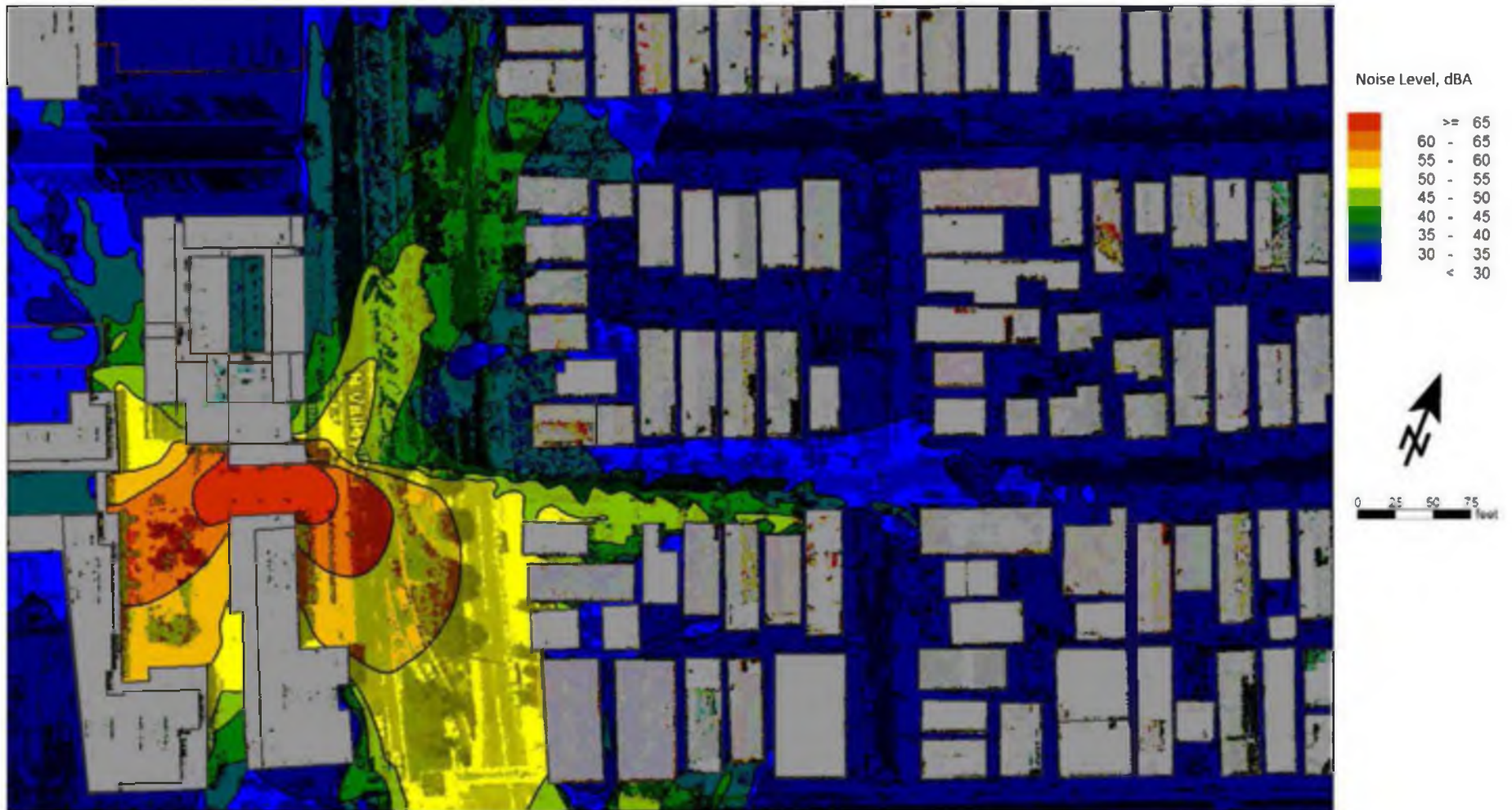
Please contact the undersigned with any questions or comments.

Very truly yours,

Thomas Corbishley  
Acoustical Engineer

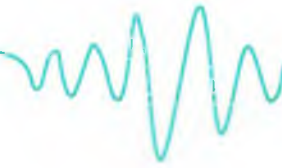


**Figure 1. Unmitigated South Terrace Noise Level at 1<sup>st</sup> Floor**

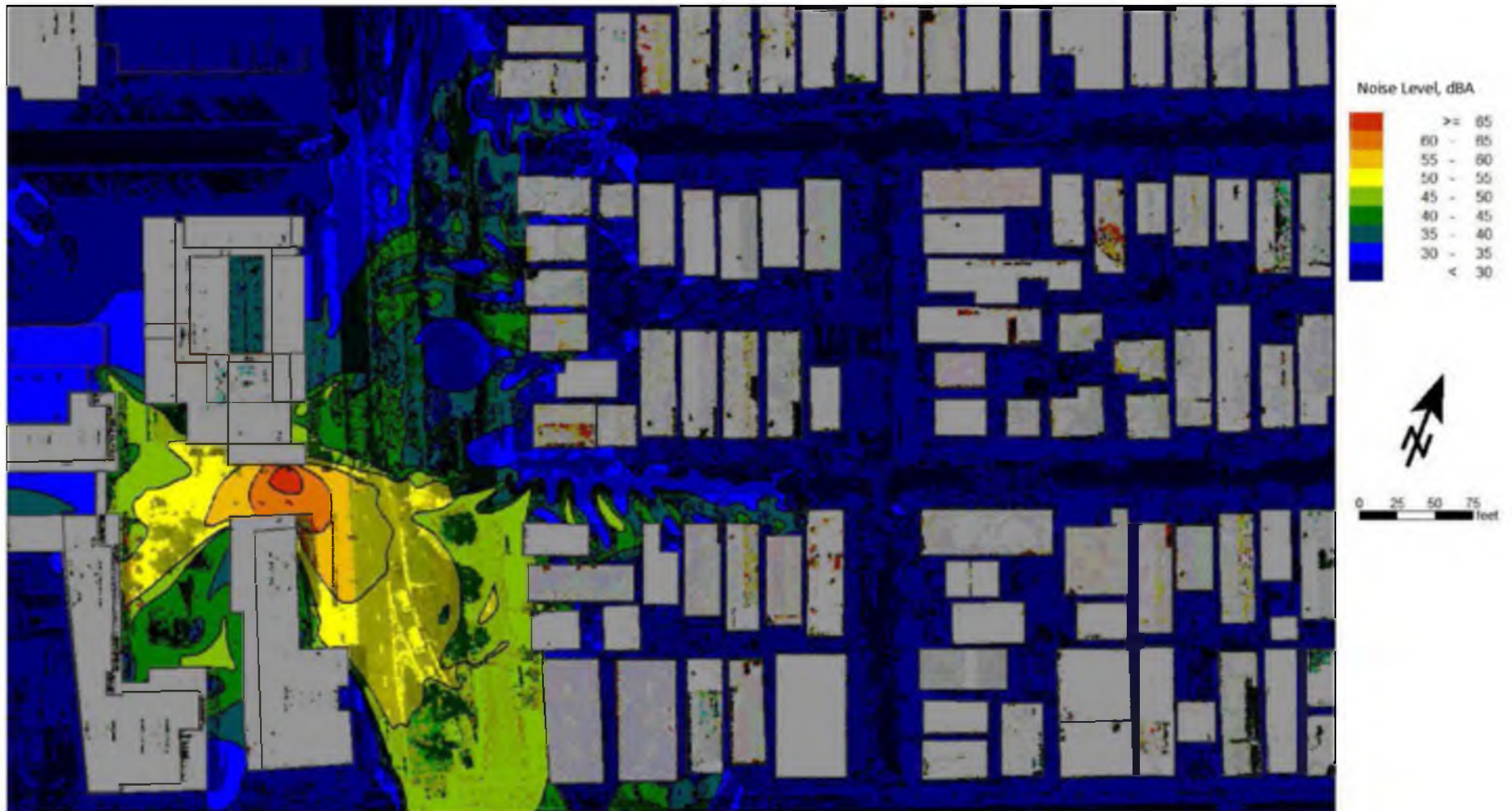




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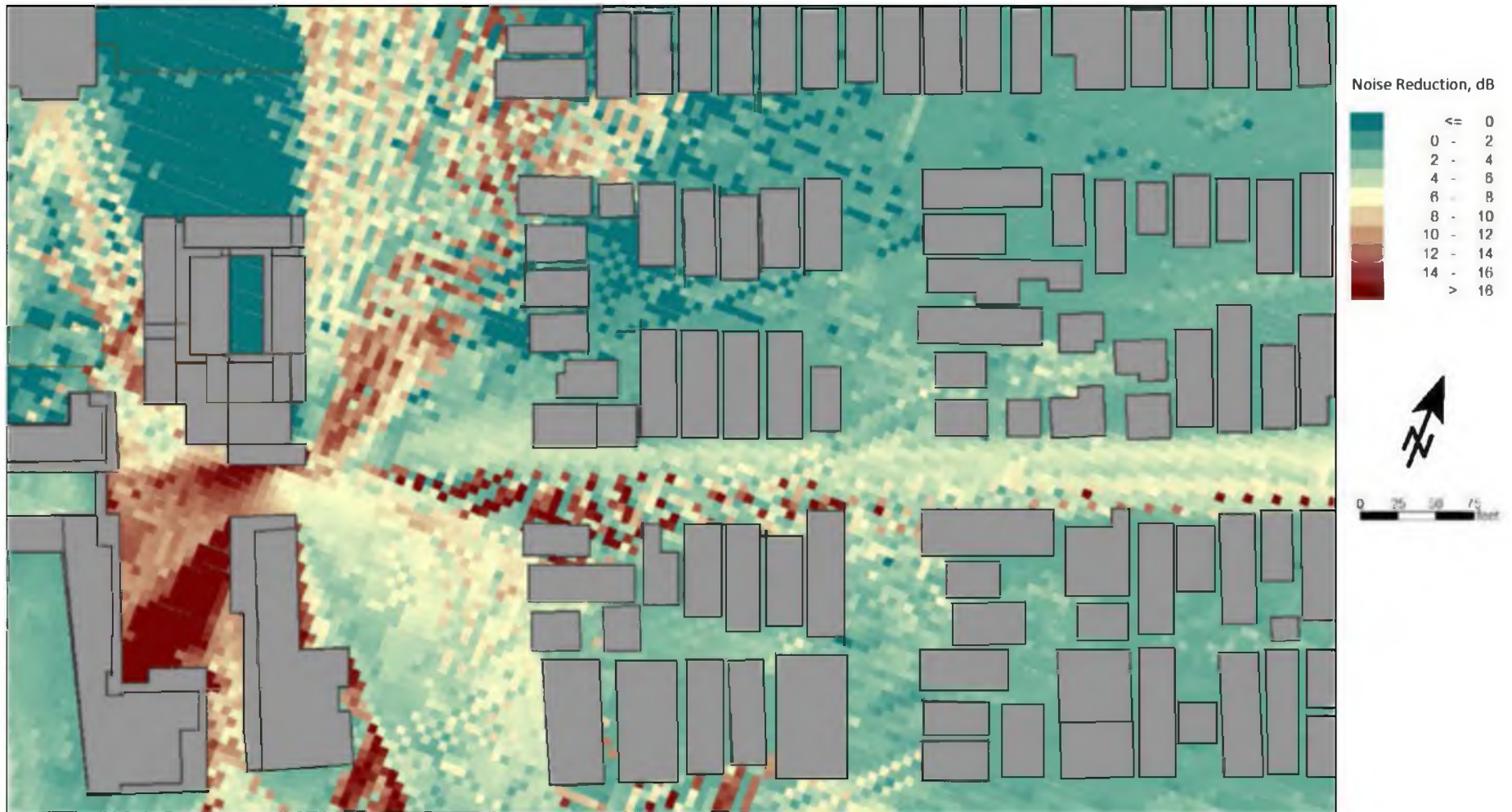


**Figure 2. Mitigated South Terrace Noise Level at 1<sup>st</sup> Floor with Sound Rated Curtains (Scenario 1)**





**Figure 3. Mitigated South Terrace Difference Map at 1<sup>st</sup> Floor with Sound Rated Curtains (Scenario 1)**



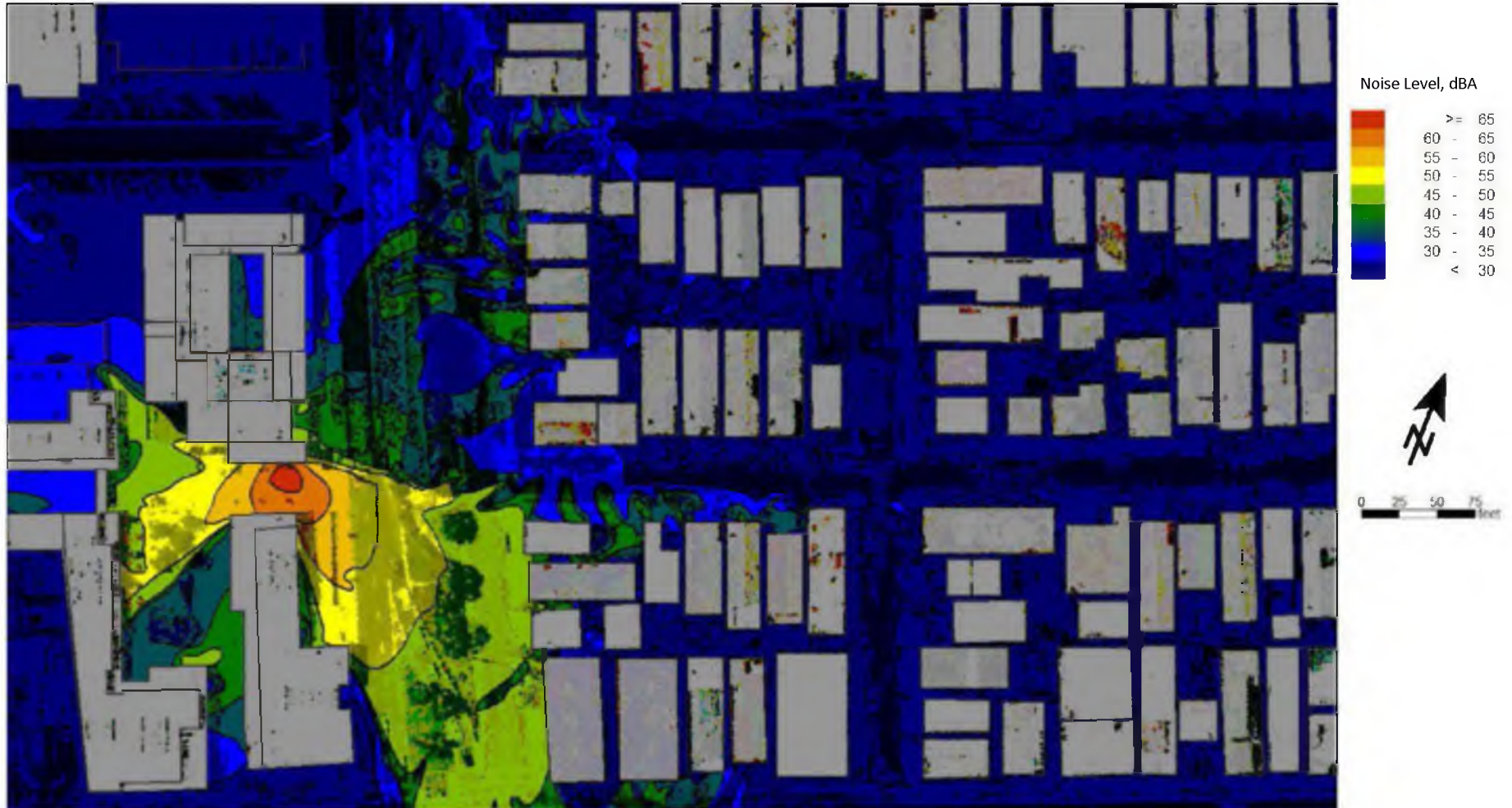


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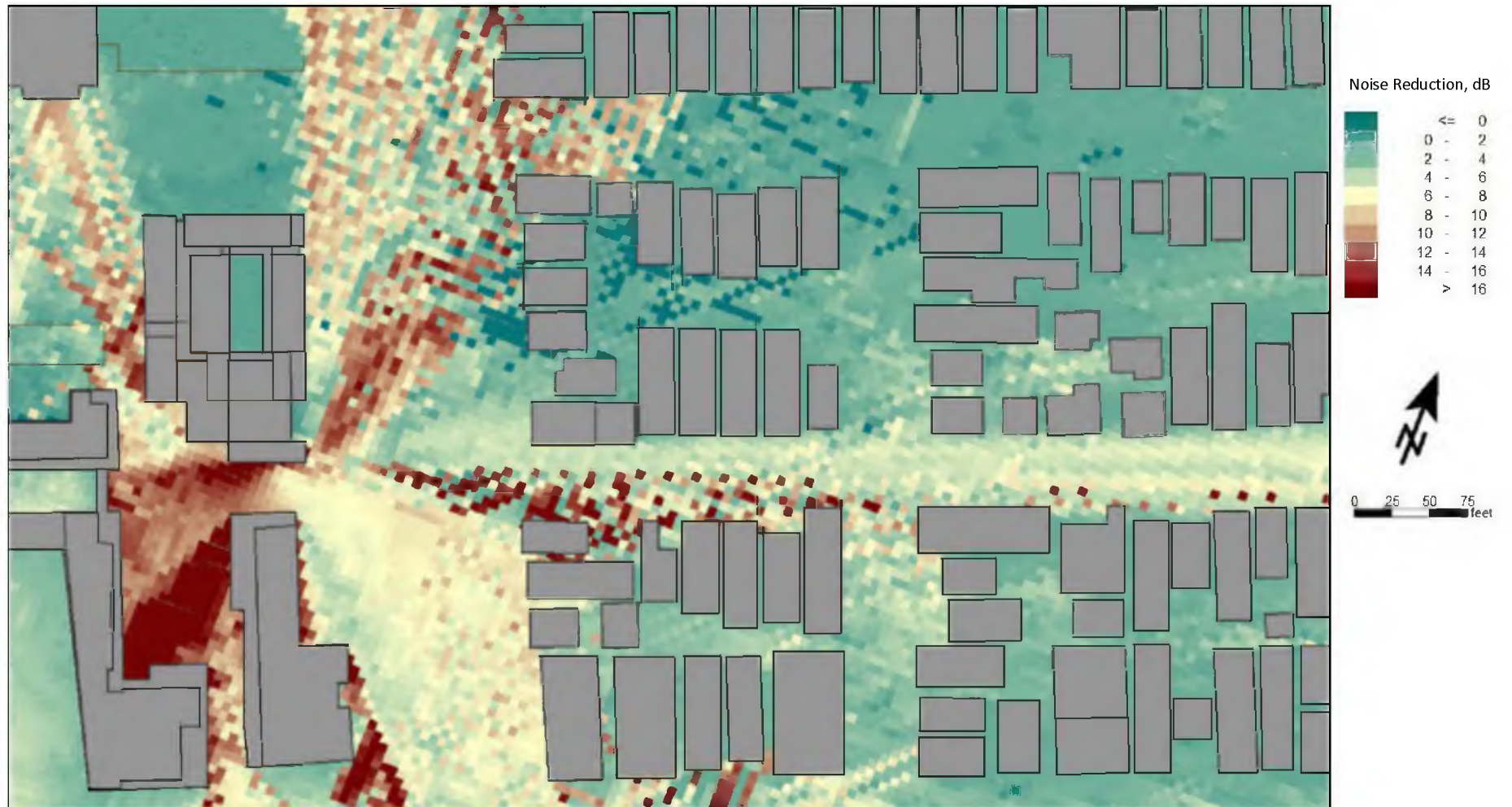


Figure 4. Mitigated South Terrace Noise Level at 1<sup>st</sup> Floor with Sound Rated Curtains and Awning (Scenario 2)





**Figure 5. Mitigated South Terrace Difference Map at 1<sup>st</sup> Floor with Sound Rated Curtains and Awning (Scenario 2)**

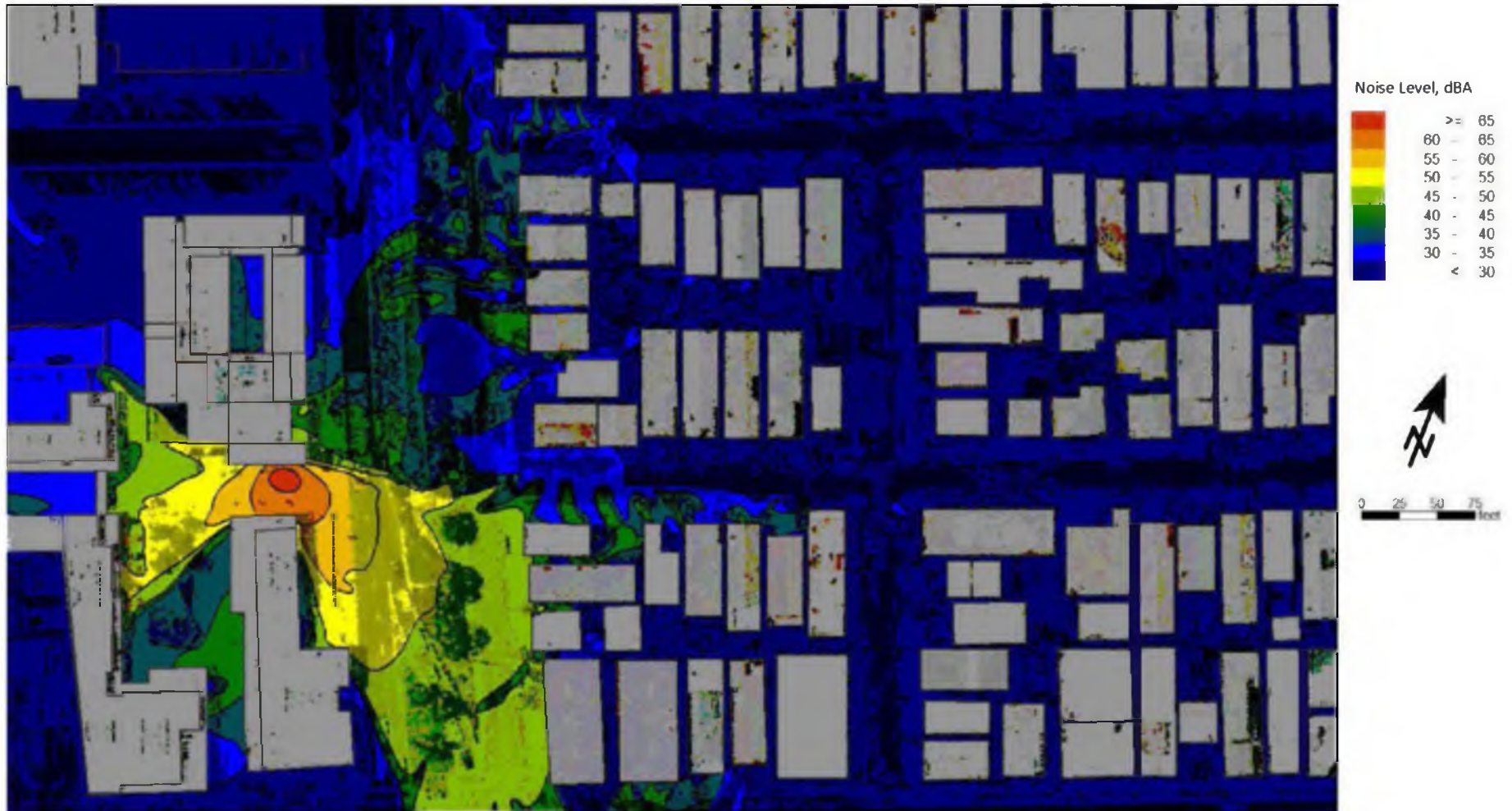




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**Figure 6. Mitigated South Terrace Noise Level at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning and Petros Living Wall (Scenario 3)**



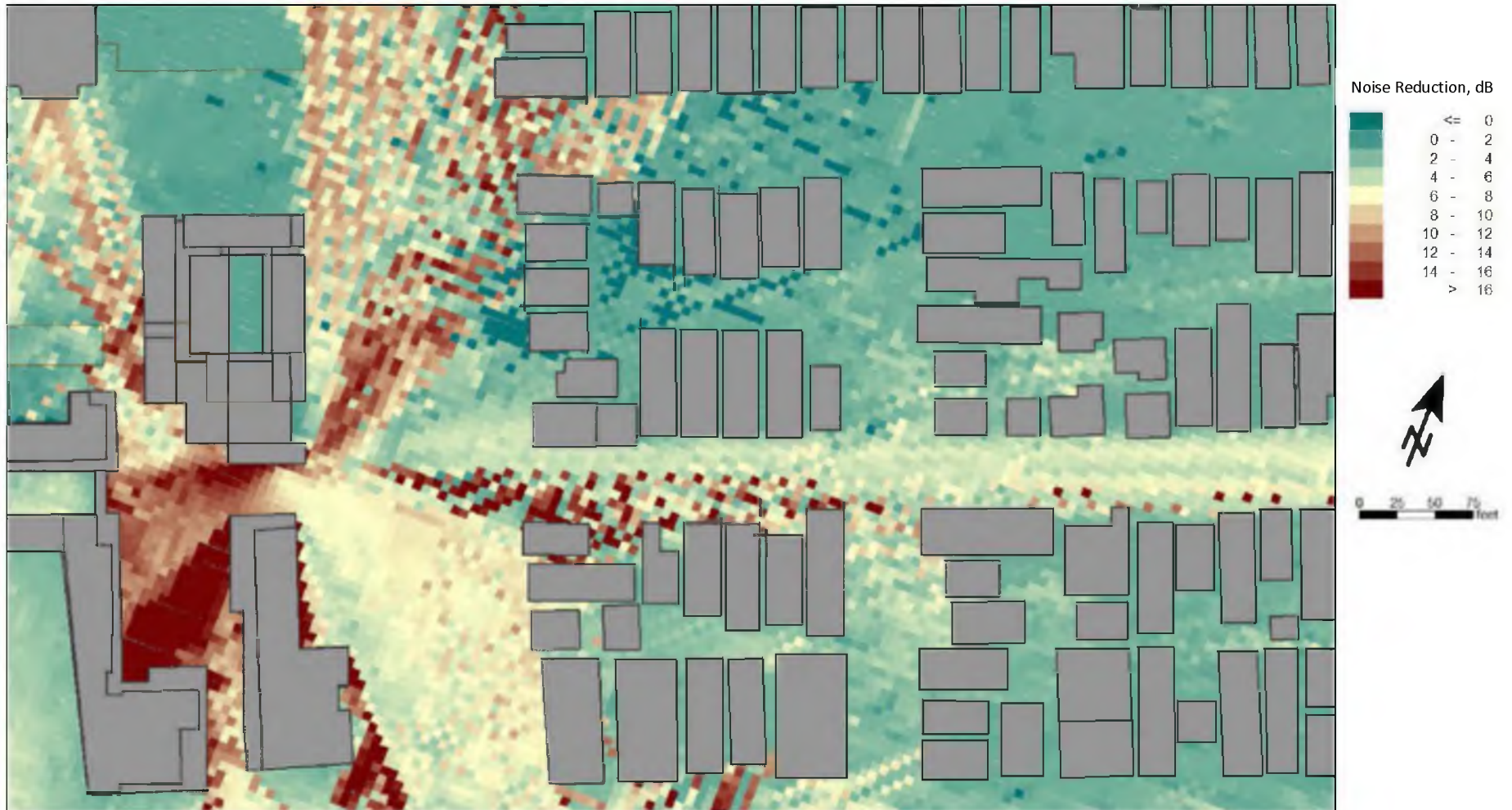


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Figure 7. Mitigated South Terrace Difference Map at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning and Petros Living Wall (Scenario 3)

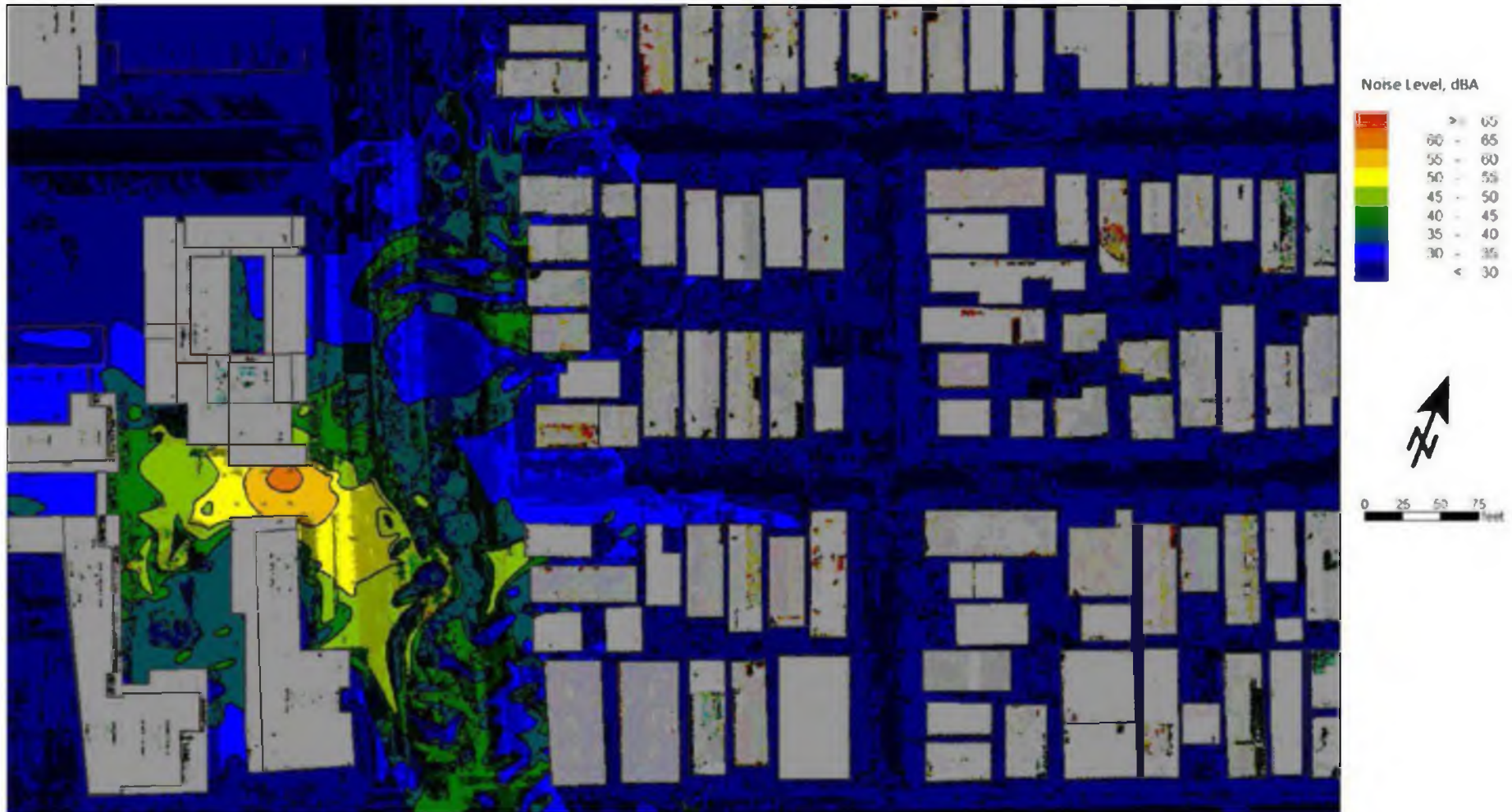


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**Figure 8. Mitigated South Terrace Noise Level at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning, Petros Living Wall and Terrace Entrance Door (Scenario 4)**



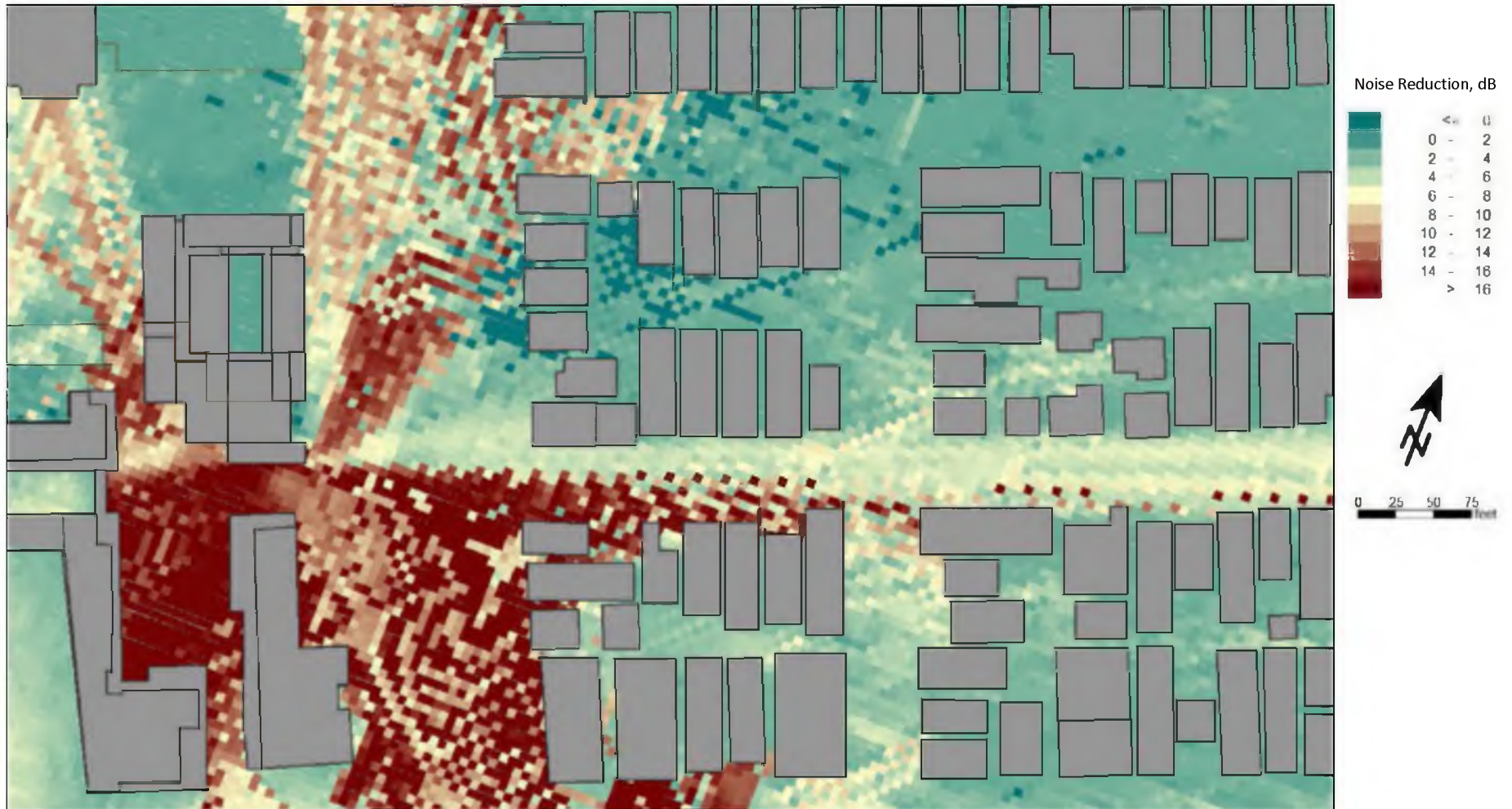


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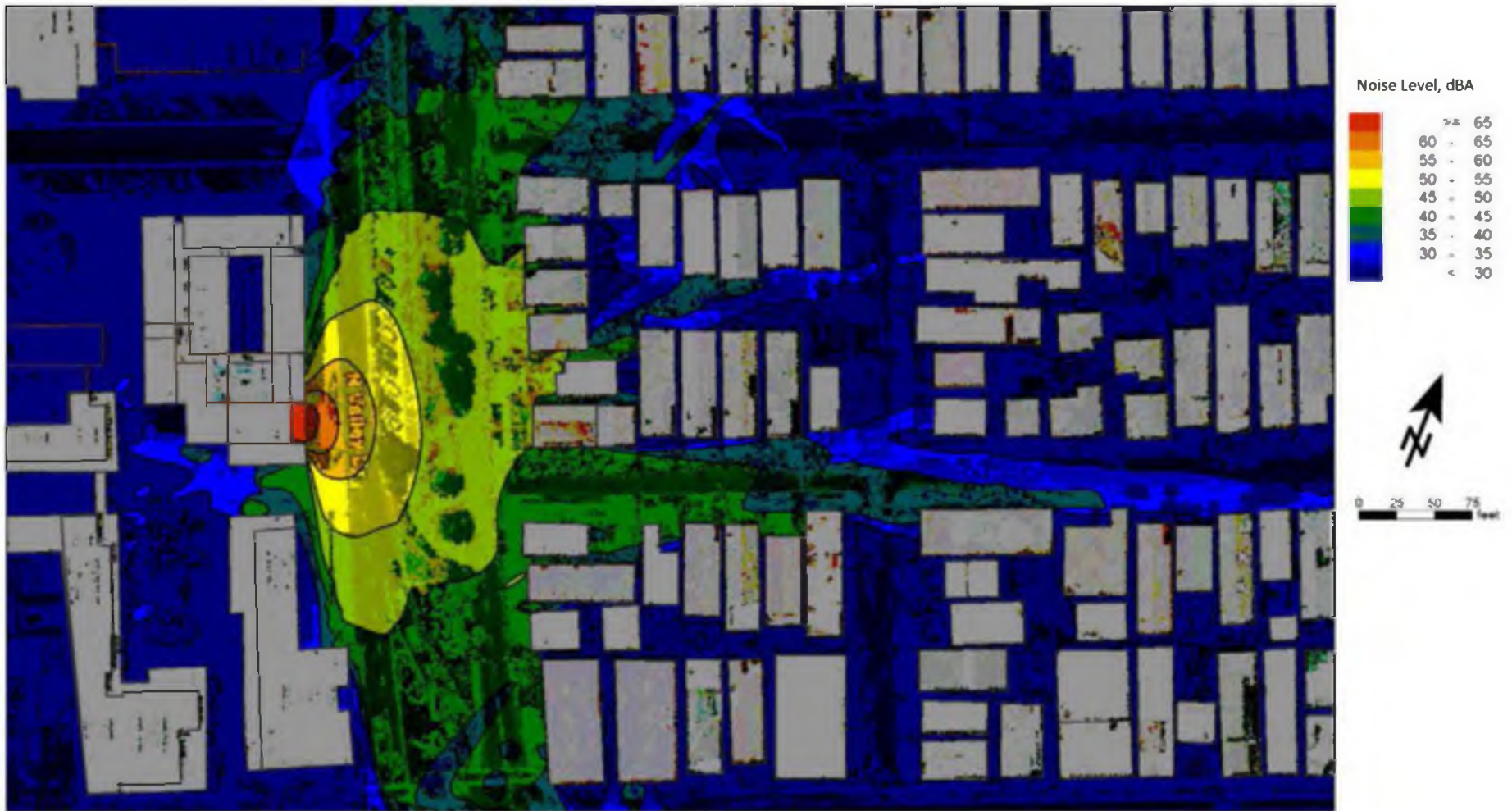


**Figure 9. Mitigated South Terrace Difference Map at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning, Petros Living Wall and Terrace Entrance Door (Scenario 4)**





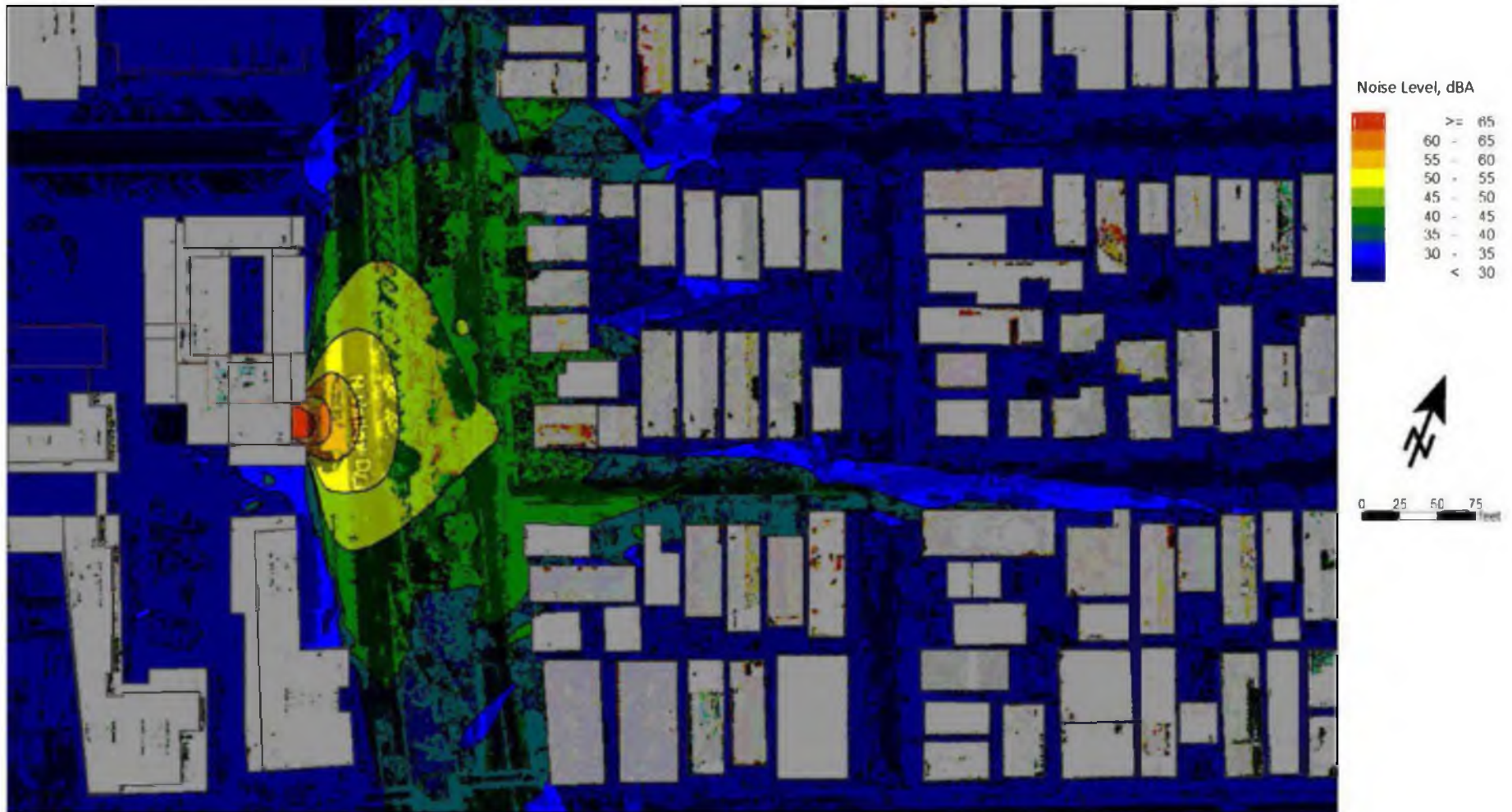
**Figure 10. Unmitigated Front Entrance Noise Level at 1<sup>st</sup> Floor**





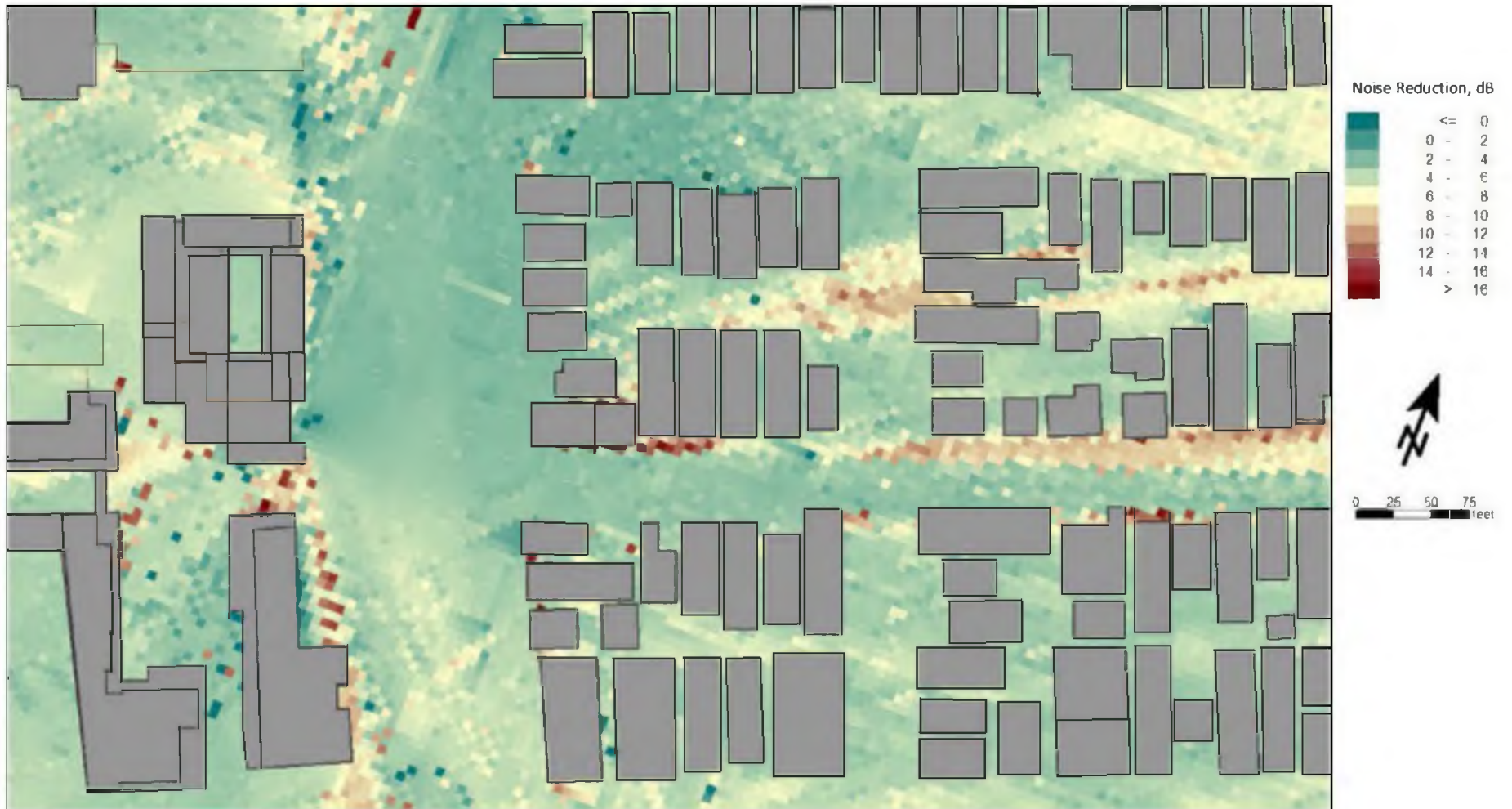


**Figure 11. Mitigated Front Entrance Noise Level at 1<sup>st</sup> Floor with Canopy (Scenario 5)**





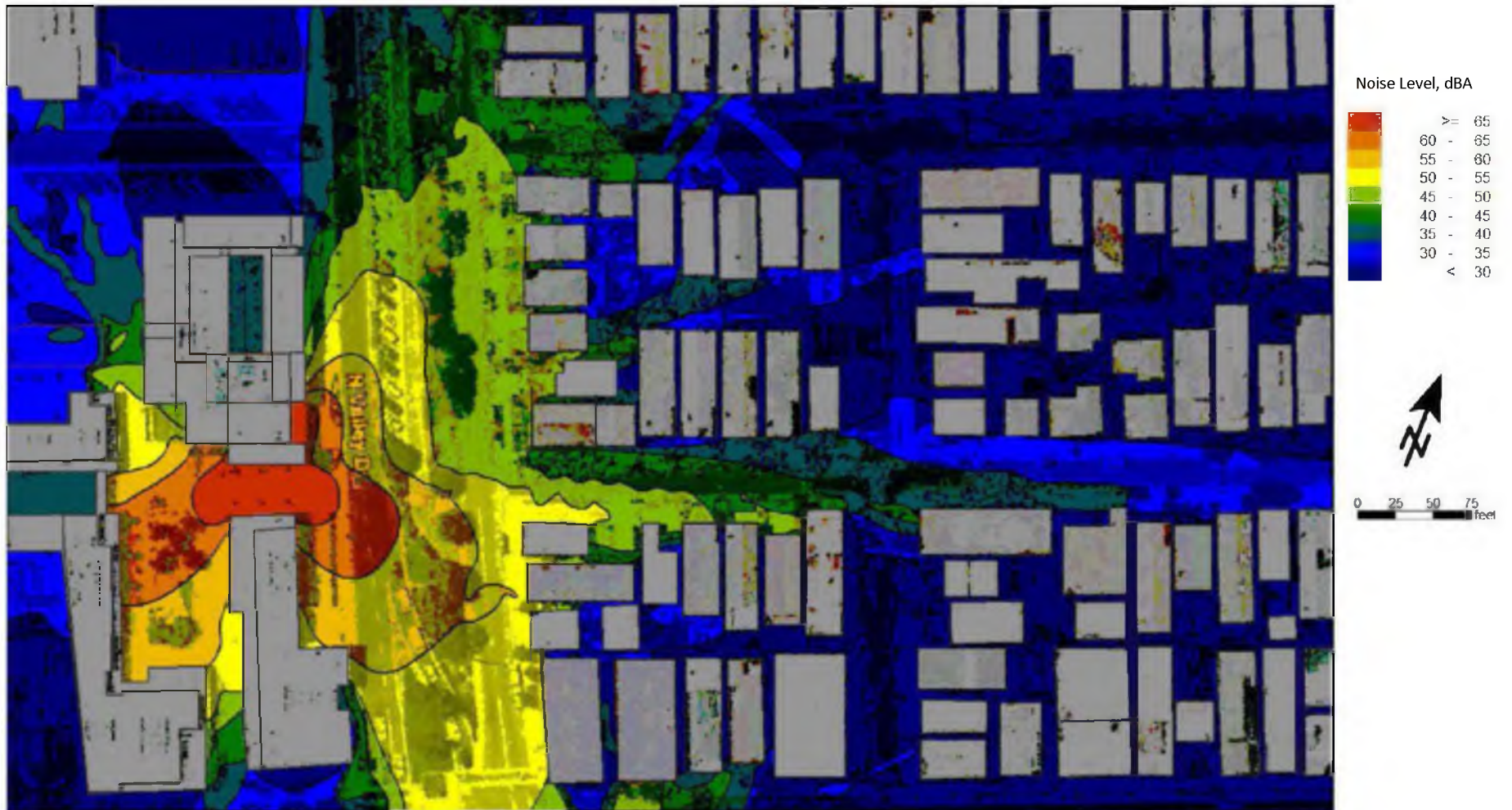
**Figure 12. Mitigated Front Entrance Difference Map at 1<sup>st</sup> Floor (Scenario 5)**







**Figure 13. Unmitigated South Terrace and Front Entrance Noise Level at 1<sup>st</sup> Floor**

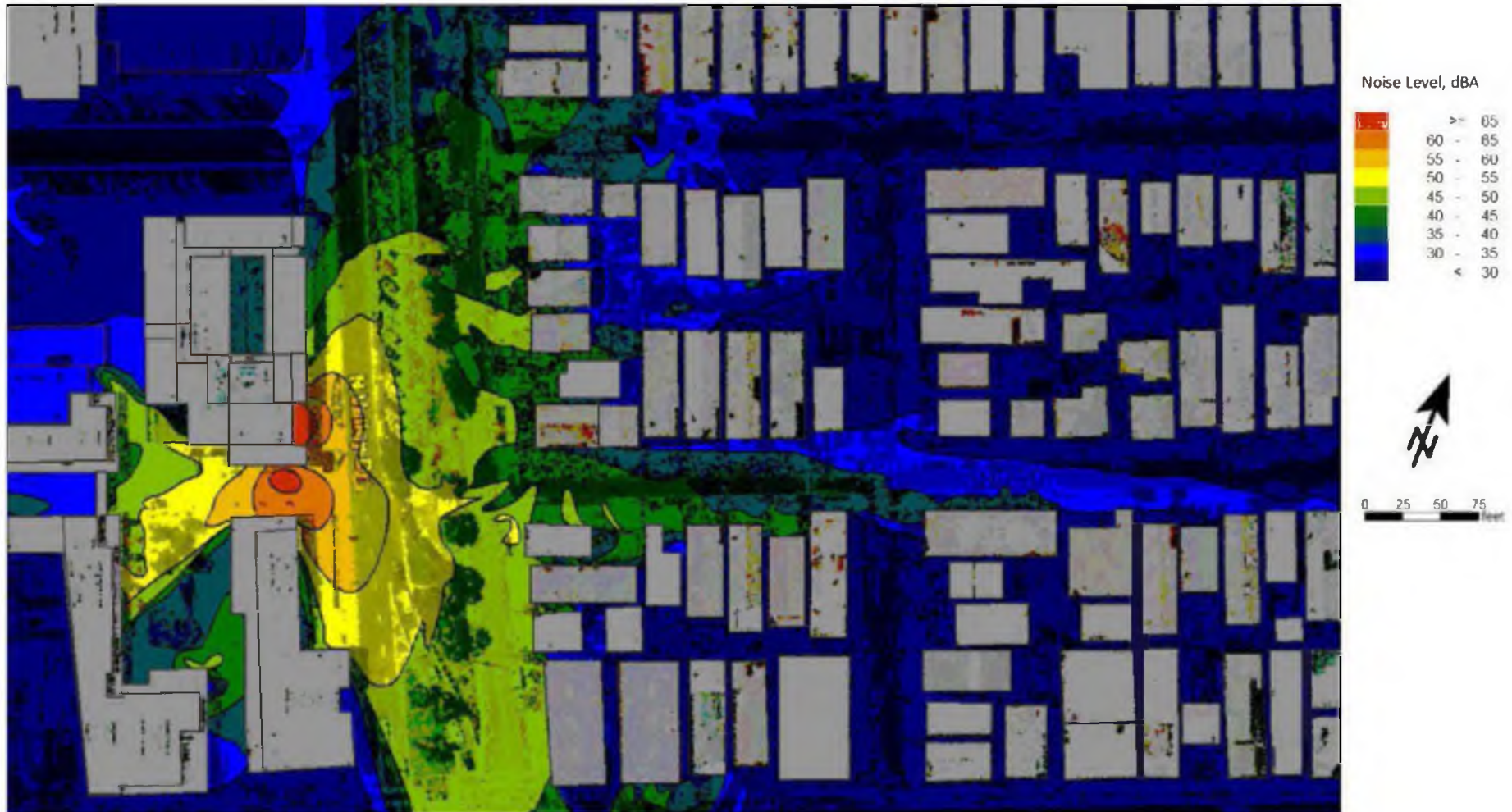


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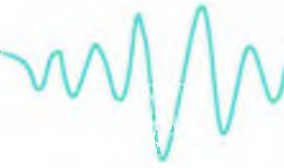
**Figure 14. Mitigated South Terrace and Front Entrance Noise Level at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning, Petros Living Wall, Terrace Entrance Door (Scenario 6)**



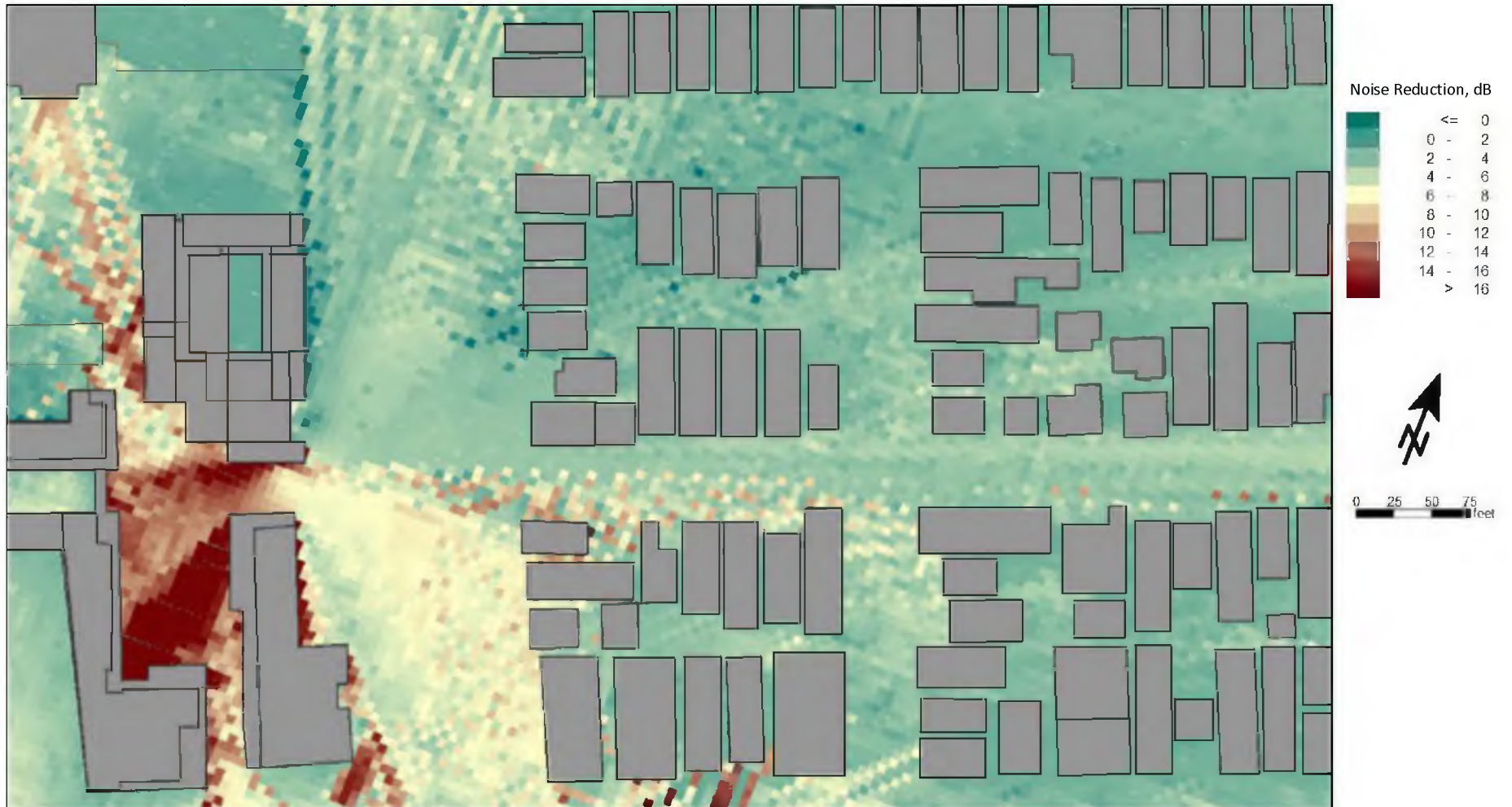


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**Figure 15. Mitigated South Terrace and Front Entrance Difference Map at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning, Petros Living Wall, Terrace Entrance Door and Front Entrance Canopy (Scenario 6)**

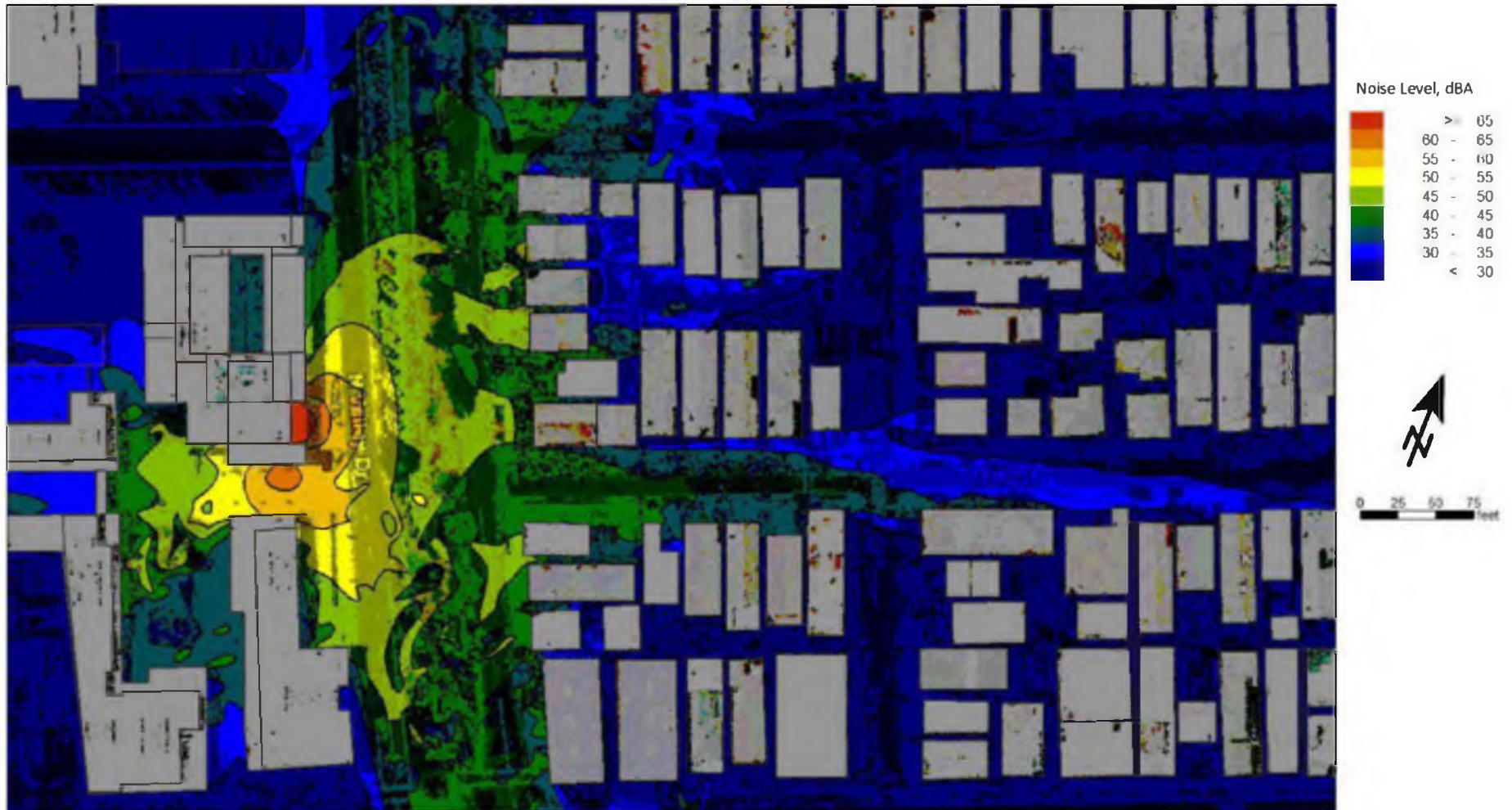


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**Figure 16. Mitigated South Terrace and Front Entrance Noise Level at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning and Petros Living Wall (Scenario 7)**





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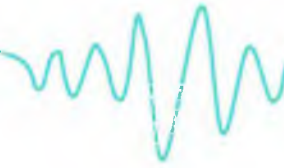
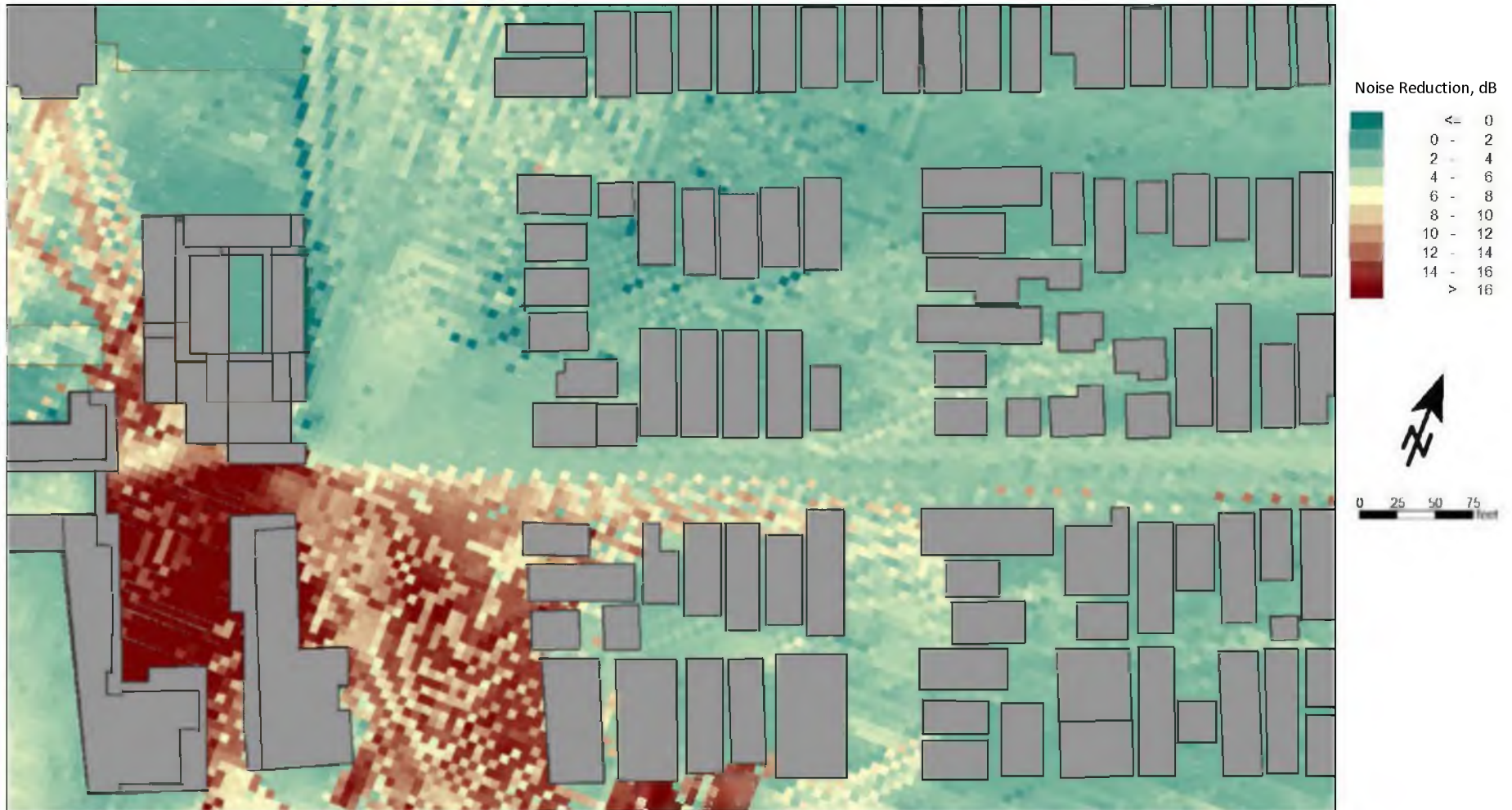


Figure 17. Mitigated South Terrace and Front Entrance Difference Map at 1<sup>st</sup> Floor with Sound Rated Curtains, Awning, Petros Living Wall and Terrace Door (Scenario 7)





22 August 2014

City Council  
City of Manhattan Beach  
Via Email

Subject: Expert Review of Shade Hotel Noise Issues

Mayor Howorth and Councilmembers:

Medlin & Associates, Inc., an acoustical consulting firm, has been requested by Don McPherson to provide an assessment of certain items regarding the noise issues surrounding the Shade Hotel. (A brief resume of our qualifications is attached.)

Our review has resulted in the following findings:

- 1) We concur with the Behrens report regarding the necessity of doors for the south terrace entrance;
- 2) The 5 to 7 decibel reductions predicted by the report in the absence of these doors will not provide substantial relief for nearby residents;
- 3) Noise-abatement in the Zinc lounge has been misrepresented, particularly with regard to the use of the "STC" rating; as no partition exists here, the STC rating is meaningless.

Each of these items is addressed below.

This letter is based in part on a personal walk-through of the terrace, lounge, and lobby of the Shade Hotel. We make references herein to the 16 April 2014 report by Behrens and Associates, Inc. These references neither confirm nor refute the findings of that report, but merely accept them on face value.

### **1. Terrace south entry-exit doors for effective noise mitigation.**

The Behrens report estimates noise reductions up to eight decibels without the installation of a door on the south entrance to the terrace. This amount of reduction will not provide substantial relief for nearby residents, for reasons stated in item #2 below.

As the report states, "... a larger decrease in level is not achieved [because] the south entrance to the terrace remains open..." The roughly ten-foot wide hole this entrance creates in the proposed curtain arrangement will substantially weaken it. To gain the full

**760-930-6515 phone**  
**PO Box 130941 Carlsbad CA 92013-0941**  
**mail@medlin-acoustics.com**  
**www.medlin-acoustics.com**

benefit, doors must be used to complete the treatment, which, according to the report, will increase noise reduction to sixteen decibels—a respectable level of mitigation.

## **2. Effectiveness of 5 to 7 dB reduction for substantial relief of significant discomfort.**

The report cites commonly accepted qualitative definitions of 3 dB, 5 dB and 10 dB noise reductions; these descriptions, however, must be taken in context. As a good reference point, Caltrans will not build a highway sound wall unless it provides a *minimum* 5 decibel noise reduction. Their policy states, “For noise abatement to be considered acoustically feasible, it must be predicted to provide at least a 5-decibel minimum reduction... this reduction represents a ‘readily perceptible change’ in the noise level.”<sup>1</sup> Thus, the eight decibels predicted with curtains alone is only marginally higher than the Caltrans criterion, and much of the reduction predicted by the report would not qualify as abatement at all.

As the report itself states, “The term ‘significant’ means that the noise reduction will be noticeable but does not necessarily mean that the mitigation measure will reduce the noise to a level where it is no longer an issue for the residents.” Given that the residents already experience substantial discomfort, this amount of reduction is inadequate.

The issue lies deeper than a few decibels one way or the other, however. Noise reductions in the Behrens report are A-weighted estimates, which severely discount low-frequency sound. Modern nightclubs are notorious for their heavy, thumping bass. The long wavelengths of such sound are immune to most standard methods of noise control, especially absorptive treatments.<sup>2</sup> They tend to easily bend around corners, pass over free-standing walls, and penetrate typical residential construction. Under the right conditions they can resonate with an interior space such as a bedroom, effectively amplifying their presence.

Figure 1 shows measurements conducted by Medlin & Associates, Inc. in a residential area near a nightclub. Similar to the Shade Hotel, residents were disturbed by this establishment despite being separated by a six-lane highway. The reason in this case was the powerful low-frequency bass which traveled almost unimpeded into the surrounding neighborhood. Consequently, control of low-frequency emissions from the audio system must be given equal footing with treatments for other noises.

---

<sup>1</sup> Caltrans’ *Traffic Noise Analysis Protocol*, May 2011.

<sup>2</sup> Typical absorptive treatments are 1-2” thick; very low frequencies require treatments much thicker (4” or more), or the use of specialized applications such as resonant panels.







## Qualifications

Medlin & Associates, Inc. is an acoustical consulting firm in Carlsbad, California. We have fourteen years of experience specializing in environmental and architectural noise control. We are currently the on-call environmental noise consultant for the City of Vista, California.

Our environmental experience centers mainly around performing technical noise studies in support of CEQA requirements. Projects range from assessing compliance of new developments with local general plans, to full-up Caltrans-protocol highway noise and abatement studies. Other project examples include measuring and modeling impacts of large power-plants on nearby neighborhoods, estimating vibration effects of underground tunneling equipment, and analyzing nightclub noise influence in residential areas. We are proficient in modeling common environmental noise sources (e.g. roads, construction, etc.), and finding creative mitigation strategies where necessary.

Our architectural work comprises a wide range of noise-control functions, from field measurements of STC, IIC, and reverberation (RT-60), to drawing review for compliance with Title 24 noise-control requirements. We have extensive experience with identifying and isolating noise sources and transmission paths in existing construction, and recommending appropriate treatments for mitigation. Noise sources range from plumbing and mechanical fixtures, to exercise and weight-lifting equipment, to high-power audio systems. Recommended treatments often involve specialty hardware designed for maximum effect. We were previously a subcontractor to the San Diego International Airport, performing assessments of architectural improvements to limit aircraft noise as part of its Quieter Home Program.

Medlin & Associates, Inc. uses state-of-the-art hardware and software to perform precise measurement and analysis appropriate to a particular task.

STRUMWASSER & WOOCHEE LLP

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† Also admitted to practice in New York

‡ Also admitted to practice in Massachusetts

August 22, 2014

City Attorney Quinn Barrow  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Re: Shade Hotel Use Permit, September 2, 2014 meeting

To the Honorable City Attorney Quinn Barrow:

I write on behalf of Don McPherson regarding the appeal of the Shade Hotel conditional use permit that will come before the City Council at its September 2, 2014 meeting. This letter concerns the issue of the appropriate standard of review for the Council's determination on this appeal. As I set forth below, pursuant to the Manhattan Beach Municipal Code and case law interpreting similar ordinances, the Council hears the appeal of the Shade Hotel use permit as if the entire case were presented to the Council anew. The review is not strictly limited to the information that was presented to the Planning Commission, but may entail review of any and all information presented to the Council by appellants, the applicant, and other interested parties.

The staff report for the August 19, 2014, City Council hearing on the revocation/modification proceedings for the 900 Club contained the following description of the Council's obligation on review of an appeal of the revised use permit: "Similar to a court of appeal, the Council acts as an appellate body and review the record to determine whether the Planning Commission's decision was based on substantial evidence in the record before it, when it made the decision." This statement is not an accurate description of the Council's authority over appeals.

The Manhattan Beach Municipal Code sets forth the procedural and substantive requirements for appeals of Planning Commission decisions on use permits and other land use determinations. Manhattan Beach Municipal Code section 10.84.020 provides that the Planning Commission has the authority to approve applications for use permits, and that "[s]uch decisions may be appealed pursuant to Chapter 10.100 of the [municipal code]." Chapter 10.100 sets forth the law governing appeals. The law provides that "[r]ights of appeal are prescribed in the individual chapters of this title authorizing each decision that is subject to appeal." (M.B.M.C., § 10.100.020.) The code sets forth time limits for appeals (see *id.*, § 10.100.030), as well as the process for initiating appeals (see *id.*, § 10.100.040). The code also describes the procedures for appeals, including timing and public hearing requirements. (*Id.*, § 10.100.050.) The procedures for appeal specify that "[a]n appeal shall be heard at a public hearing if the decision being appealed required a public hearing." (*Id.*, § 10.100.050, B.) Notably, nowhere in the code is the standard of review of appeal described, or any requirements or restrictions set forth that would limit the presentation of information on an appeal. Consistent with the absence of restrictions in



the code, in prior appeals parties have introduced new materials to the City Council in support of their arguments for or against appeals.

Courts have consistently construed ordinances similar to the Manhattan Beach Municipal Code, which do not contain any specific restrictions on the standard of review for appeals from inferior decision making bodies to the City Council as requiring *de novo* review of the matter appealed. As one Court of Appeal stated, “Although administrative review is usually called an appeal, in most jurisdictions it is a *de novo* proceeding in which the entire case is repeated. (California Zoning Practice, [Cont. Ed. Bar. 1969] §10 69, p. 473.) **We know of no reason why the council should be restricted solely to a review of the record before the commission where specific procedures have not been established by ordinance.** (In general, see 56 Cal.Jur.2d, Zoning, § 185, p. 67.)” (*Lagrutta v. City Council* (1970) 9 Cal.App.3d 890, 895 [emphasis added].)

Similarly, in *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4<sup>th</sup> 865, the Court of Appeal construed an ordinance that “does not limit the City Council’s consideration or review of the use permit decision to the issues raised by the person filing the appeal.” (*Id.* at p. 877.) Indeed, the Court of Appeal concluded that the language of the ordinance analyzed was “consistent with the ‘appeal’ being in reality a transfer of the final decision-making authority from the Planning Commission to the City Council, that is, **a procedural mechanism for triggering the City Council’s independent and new consideration of the use permit.**” (*Ibid.*)

By contrast, the Court of Appeal in *West Chandler Boulevard Neighborhood Association v. City of Los Angeles* (2011) 198 Cal.App.4<sup>th</sup> 1506, the Court of Appeal reviewed a much more detailed municipal code provision that specifically limited the city council’s review of a variance “only on the evidence and findings of the Zoning Administrator.” (*Id.* at p. 1519, citing Los Angeles Municipal Code § 12.27(K).) The Court of Appeal found that this *specific* language required the City Council’s review to be based solely on the record before the Zoning Administrator, thereby removing the case for the general *de novo* standard of review discussed in *Lagrutta v. City Council*. (*Id.*, at p. 1520.) The case illustrates the specificity that is required to overcome the general presumption that an appeal of a land use determination is conducted by a city council on a *de novo* basis. Because the Manhattan Beach Municipal Code does not contain any provision that specifies what evidence may be reviewed by the City Council on appeal of a use permit, it falls within the types of ordinances construed in *Lagrutta* and *Citizens for Open Government* which require an appeal proceedings to be conducted as if it were a new proceeding on the use permit item.

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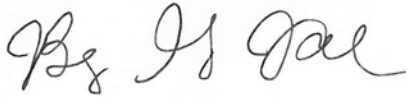
Honorable City Attorney Quinn Barrow

August 22, 2014

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In summary, the City Council should conduct the appeal of the Shade Hotel use permit as if conducting a hearing anew on the issue, and allow a full presentation of materials from the appellant, the applicant, and any interested member of the public.

Very truly yours,



Beverly Grossman Palmer

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

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

### 9 April 2004. **Mr. Zislis files application for building permit**

- Building permit No. 04-0086 issued 19 August 2004;
- Page 5 limits occupancies to: 1) Ground floor, 204; 2) 2<sup>nd</sup> floor 85, and, 3) Roof deck 45;
- Page 24 limits Zinc Lounge and lobby to 77;
- Future 2005 CUP, Reso NO. PC 10-08 approved these occupancies; and,
- Future entertainment permits unlawfully permit higher occupancies.

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

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

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

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

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

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

- The planning commission approved in the building plans, Exhibit F in the May 2005 staff report, which limit occupancy to 154 persons less than currently permitted, as improperly increased by staff in the December 2008 entertainment permit.
- Staff did not present to the 2005 PC the Type 70 hotel alcohol license as an option to the Type 47, for which Mr. Zislis applied;
- Staff testified to the 2010 PC, “We looked at all of the (other) licenses and **there wasn’t one that worked for what the applicant wanted to do.**” [12 May 2010 video, 00:32 hh:mm];

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- At the 2005 hearing, Ms. Jester testified the terrace would not serve food or alcohol. [Exhibit 4];
- Shortly later, Mr. Zislis testified that the terrace would close for service at 10 AM weekdays and 11AM weekends, with seating for 22 occupants. [*Ibid.*];
- At the end of the hearing, Ms. Jester added alcohol and food service to the terrace. [*Ibid.* and Exhibit 5 Finding L, Resolution No. PC 05-08, the “2005 CUP”];
- The above three points represent the sum total of terrace facts received by the 2005 PC. The application, staff report and draft resolution did not mention the terrace. [Exhibits 6, 7 & 8. The 2005 CUP refers to the terrace as the “Porch.”];
- The 11 June 2006 entertainment permit increased the terrace hours to 11 PM, from 10 AM weekdays and 11 AM weekends in the 2005 CUP Finding L. [Exhibit 9];
- The Shade application, staff report and draft resolution all describe the sound barrier wall between the Zinc Lounge as required to isolate the hotel lobby from the nightclub [Exhibits 6, 7, & 8, Finding O in the 2005 CUP];
- Mr. Zislis’s testimony to the 2005 CUP cited the same reason for the sound wall, to isolate the lobby from the Zinc nightclub. [Exhibit 4];
- All entertainment permits from 2006 through March 2013 require the Zinc-lobby wall, [Exhibit 9 provides example for 11 Jul 2006 entertainment permit];
- Shade never implemented the sound barrier wall between the Zinc bar and the lobby.
- The 2005 PC approved the 2005 CUP, Resolution No. PC 05-08; and,
- The 2005 PC amended Condition 38 in the Metlox Master Use Permit Reso, 5770, to permit sale of liquor to the general public.

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

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

17 Nov 2005. Certificate of occupancy issued

### **2005-2009. Police call logs for Shade Hotel disturbances**

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

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

- Zinc Lounge hours increased from 11 PM to midnight Sun-Thu and 1 AM Fri-Sat;
- Terrace hours increased to above, from 10 AM weekdays and 11 AM weekend;
- Rooftop Skydeck hours increased to above, from 10 PM;
- Restaurant increased from breakfast and evening tapas to full-service, all day;
- Dancing increased from the 15’ by 20’ Zinc dance floor to throughout the hotel; and,

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- Elimination of the sound-barrier wall requirement between Zinc Lounge and hotel lobby.

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

- Ten nearby residents complained regarding noise from Shade Hotel. [[24Jun2009-PC-Minutes](#) ; Minutes Excerpts Pg 12];
- Commissioner Andreani stated that the extended hours, size of special events, and extended food service do not comply with the intended use of the property [*Ibid.*];
- Commissioner Paralusz opposed extended hours, because of noise impacts. She supported extended food service [*Ibid.*];
- Commissioner Lesser requested a detailed description of noise mitigation measures and an acoustic study. He supported patrons exiting to the west into Metlox Plaza. [*Ibid.*];
- PC Chair Seville-Jones opposed extended hours, but accepted lunch service. She desired patrons exiting to the west and requested more on noise mitigation [*Ibid.*]; and,,
- The PC continued the public hearing to 22 July 2009.

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

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

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

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

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- Commissioner Paralusz believed Shade might violate the subjective standards in the noise ordinance. She wanted mitigation measures installed, before considering extension of hours. [*Ibid.*];
- Chair Seville-Jones stated Shade Hotel violates the subjective standard in the noise ordinance. She believed noise mitigation infeasible and suggested denying the application. [*Ibid.*]; and,
- The PC tabled the public hearing.

### Nov-Dec 2009.

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

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

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

### Mar 2010. Behrens' analysis report of noise mitigation effectiveness

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

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

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

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

- Nine residents in the Shade neighborhood presented evidence of noise disturbances [[12May2010-PC-Minutes](#) , Minutes Excerpts Pg 43];
- In response to Commissioner Lesser, Ms. Jester stated the Hotel/Motel ABC Type 70 license "would not work for the subject application." [*Ibid.*];
- Mr. Zislis testified he would prefer not having a wall separating the Zinc Lounge from the lobby [*Ibid.*];
- Mr. Hubbard testified regarding conditions required by the neighborhood, including the retractable wall between the Zinc Lounge and lobby [*Ibid.*];
- Commissioner Andreani stated she would consider extended hours only if mitigation measures implemented and tested. She required patron ingress-egress at the west door during nighttime [*Ibid.*];
- Commissioner Seville-Jones stated Shade violates the subjective standards in the noise ordinance and questioned effectiveness of the proposed mitigation measures. She doubted that the application could receive approval [*Ibid.*];
- Commissioner Lesser stated that the applicant has the right to reject noise mitigation measures, and that Mr. Zislis opposes the wall between the Zinc Lounge and lobby.

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- Vice-Chair Paralusz doubted that further discussions between Mr. Zislis and the neighbors would prove helpful. [*Ibid.*];
- The commissioners appeared to conclude the matter had reached an impasse [*Ibid.*];
- Mr. Zislis requested a private consultation with Mr. Hubbard [*Ibid.*];
- Upon returning, Mr. Hubbard stated he had conceded the Zinc Lounge-lobby wall and accepted extension of hours, to enable the proceedings to go forward [*Ibid.*];
- Ms. Jester summarized conditions agreed to by Mr. Zislis, Mr. Hubbard and commissioners, to include the following: 1) Elimination of the Zinc-lobby wall; 2) Hours increased to midnight for Friday and Saturday, not including the skydeck, 3) Patron ingress-egress at the west door; 4) Double-door vestibule at the front entrance; and, 5) Full enclosure of the terrace. [*Ibid.*].

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

### **3 Sep 2013. The city council conducted a business item to address the 2010 CUP issue** [\[3Sep2013-CC-Minutes\]](#), Minutes Excerpts Pg 86]

- The written staff report states a use permit cannot take effect until all conditions satisfied, such as the physical noise mitigation in the 2010 CUP. [Exhibit 28]; and,
- Mr. McPherson testified that if the 2010 CUP cannot not take effect, then the 2005 CUP never took effect either, because Shade never implemented the sound wall between the Zinc Lounge and the lobby. Therefore, the original Metlox CUP remains in effect, so Shade cannot sell alcohol to the general public. [Exhibit 29]

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

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

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

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

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

- At meetings on Dec 3 and Dec 10, residents requested the city council to schedule a business item, to make a determination that Shade has violated its use permit, pursuant to MBMC 10.104.030, Revocation and Modification of Discretionary Permits [Exhibits 32 & 33]; and,

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On 9 Dec 2013, residents presented to Interim City Manager Jalili, an overview briefing of the Shade CUP issue. [See attached Jalili briefing, Attachment No. 5]