

## Martha Alvarez

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**From:** Martha Alvarez  
**Sent:** Wednesday, December 14, 2016 9:03 AM  
**To:** Martha Alvarez  
**Subject:** FW: Issues for 2nd Reading of Downtown Specific Plan & Ordinances  
**Attachments:** 161206-McP-CC-DSP-CEQA-Violations-Compiled-ABY.pdf; ATT00001.htm; 161206-CityAttorney-McP-Rebut-MND-Violations.pdf; ATT00002.htm

**From:** "Donald McPherson" <[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)>  
**To:** "Marisa Lundstedt" <[mlundstedt@citymb.info](mailto:mlundstedt@citymb.info)>  
**Cc:** "Mark Danaj" <[mdanaj@citymb.info](mailto:mdanaj@citymb.info)>, "Liza Tamura" <[ltamura@citymb.info](mailto:ltamura@citymb.info)>  
**Subject:** Issues for 2nd Reading of Downtown Specific Plan & Ordinances

Director Lundstedt,

Congratulations on the well-organized and efficient consideration by the city council of the Downtown Specific Plan, made possible only by the comprehensive documentation set forth in the staff report. Councilmembers had remarkably few changes to the final product, with which I wholeheartedly agree.

For the 2nd reading of the resolution and ordinances, I do have a couple of issues easily resolved.

**Issue 1: Mitigated Negative Declaration Revision.**

As expressed in my email below and Attachment 1, the Mitigated Negative Declaration ["MND"] needs editing to remove all references to: a) 2<sup>nd</sup> floor outdoor dining; b) Height increases other than the 2-foot elevator shaft; and, c) The pier Beach Head circulation.

The MND submitted on December 6 to the council contained many errors, unlike all other documents in the packet. For example, under Development Standards, at Pg. 14, Bullet 3, the MND states, *"The proposed Specific Plan includes a maximum height exception of 2 feet for sloped roof forms, solar panels, and mechanical equipment in Area B."* The Specific Plan does not include this height exception.

The MND submitted on October 26 to the planning commission ["PC"] contained this same error, even though the commissioners had long before rejected the height exception. In fact, the MND versions submitted to the PC and to the city council on October 26 and December 6, respectively, appear essentially identical in substance.

This apparent neglect of MND compatibility with other project documentation brings me to a second issue.

**Issue 2. Electronic Posting of All Approved Documents, Including MND.**

The December 6 staff report states at Attachment 23, *"Due to the volume of this document [MND] a hard copy is available in the City Clerk's Office..."* For the October 26 PC hearing, staff posted online the substantially identical 9 MB file for the MND. The "volume" did not change in the version submitted to the city council.

For the December 6 council meeting, resident and attorney Bill Victor spent two days trying to find the hard copy of the MND. During the council meeting, the lobby had no MND

hard copy, so a staff member promptly went upstairs to get us one [which I kept]. These several failed attempts to access the final MND seem unlikely coincidental.

I have prepared a 01:41 hh:mm video clip of the December 6 council discussion, bookmarked for each item discussed. For expediency in checking council-approved changes, for the second reading, please post online all documentation, this time including the revised Mitigated Negative Declaration.

### **Issue 3. Coastal Commission Authority for CEQA Compliance.**

The December 6 staff report erroneously states, *"Although the MND evaluated the project's environmental effects, CEQA does not apply to activities and approvals necessary for the preparation and adoption of LCP Amendments in accordance with State regulations.*

*(Attachment 23)"* [Pg. 16, ¶ 3]

Nothing could be further from the truth. Per my email below and Attachment 1, *"For long-range land-use plans in the coastal zone, CEQA assigns compliance responsibility to the Coastal Commission. [CCR 15265(b) & (c)]"*

At the December 6 council meeting, the City Attorney kindly provided the Attachment 2 rebut prepared by the city CEQA expert, regarding CEQA violations in the MND, as stated in my email below and Attachment 1.

I am no expert on CEQA, but my attorney Felix Tinkov specializes in that subject. During our nine-year battle with the City of Encinitas on a project with identical CEQA issues, a month or so ago, we finally prevailed. Mr. Tinkov can use his existing exhaustive research on CEQA case law to obliterate the unsubstantiated claims in Attachment 2.

Fortunately, revision of the MND to comply with city council direction will remove the need to address such CEQA issues with the Coastal Commission.

### **Recommendations.**

Community Development has brought the two year-plus project for the Downtown Specific Plan to a successful conclusion. Some loose ends need tying up, consistent with city council direction on December 6. Let's make Coastal Commission approval pro forma.

To that end, I suggest the following:

- 1) Revise the Mitigated Negative Declaration to exclude all references to a) 2<sup>nd</sup>-floor outdoor dining, b) Height increases other than two-foot high elevator shafts; and, c) Pier Beach Head improvements; and,
- 2) For the 2<sup>nd</sup> reading of the specific plan resolution and ordinance amendments, electronically post all documents for city council approval, including the MND.

I appreciate your consideration of my requests.

Thanks,

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**From:** Donald McPherson [<mailto:dmcphersonla@gmail.com>]

**Sent:** Saturday, 3 December, 2016 10:42

**To:** David Lesser <[david.lesser@verizon.com](mailto:david.lesser@verizon.com)>

**Subject:** FW: Initial Study for 2nd-Floor Outdoor Dining Violates CEQA, Specific Plan, Item L-10

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**Sent:** Saturday, 3 December, 2016 09:50

**To:** Tony D'Errico <[tderrico@citymb.info](mailto:tderrico@citymb.info)>; David Lesser <[dlesser@citymb.info](mailto:dlesser@citymb.info)>; Amy Howorth <[ahoworth@citymb.info](mailto:ahoworth@citymb.info)>; Wayne Powell <[wpowell@citymb.info](mailto:wpowell@citymb.info)>; Marcus Burton <[marcus.b@optusnet.com.au](mailto:marcus.b@optusnet.com.au)>

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**Subject:** Initial Study for 2nd-Floor Outdoor Dining Violates CEQA, Specific Plan, Item L-10

Mayor Pro Tem David Lesser

City Council

City of Manhattan Beach

Via Email

**Subject:** Initial Study for 2<sup>nd</sup>-Floor Outdoor Dining Violates CEQA, Agenda Item L-10

Mayor Pro Tem Lesser and Councilmembers,

The attached letter provides proof that the mitigated negative declaration in the Downtown Specific Plan violates the California Environmental Quality Act ["CEQA"]. The letter primarily presents 2<sup>nd</sup>-floory outdoor dining as an example.

The initial study postpones analysis of whether substantial evidence exists for significant environmental effects, until the sequential initiation of each private development and public improvement proposed in the Downtown Specific Plan ["DSP"]. CEQA and case law

categorically prohibit this proposed piecemeal approach for environmental review by the DSP initial study.

The attached letter unfortunately must go into detail regarding compliance with CEQA, including numerous citations to CEQA Guidelines in the California Code of Regulations.

Additionally, the letter provides detailed substantial evidence of environmental effects that the DSP project will create. CEQA requires the mitigated negative declaration to provide this information for all phases of the project: planning, implementation and operation of the future Downtown.

The DSP initial study improperly postpones environmental analysis and mitigation specification, until developments materialize in the future Downtown. That erroneous approach invalidates the mitigated negative declaration and may instead **require an Environmental Impact Study**.

This letter essentially provides the top-level environmental review that the initial study should have accomplished. As result, my letter necessarily includes a large amount of detail.

Councilmembers can obtain a good understanding of why the mitigated negative declaration fails to comply with CEQA, by reading the initial two-page Summary and the one-page Conclusion at the end of the letter.

If the city council prohibits 2<sup>nd</sup>-floor outdoor dining and balcony encroachments, then staff can probably prepare a valid mitigated negative declaration for the remainder of the DSP.

Nothing precludes the council from conditioning 2<sup>nd</sup>-floor use, by prohibiting outdoor dining and balcony encroachments. The planning commission has verified that substantive evidence exists of significant environmental effects. As result, the city council must act to amend the municipal code and Local Coastal Program to preclude future environmental impacts.

The attached letter refers to the initial study and mitigated negative declaration used by the planning commission in their October 26 hearing, because the council packet does not include an electronic file of the document, at least for us residents.

Thanks,

Don McPherson

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Attachments:

- 1) Letter and Exhibits 1, 2, 3 & 4; and,
- 2) ATTCH 2 [Strand House Misrepresentations of Material Fact in Use Permit Process]

Mayor Pro Tem David Lesser

City Council

City of Manhattan Beach

Via Email

Subject: Initial Study for 2<sup>nd</sup>-Floor Outdoor Dining Violates CEQA, Agenda Item L-10

Mayor Pro Tem Lesser and Councilmembers,

**1. SUMMARY.**

As presented in this letter, based on the example of 2<sup>nd</sup>-floor outdoor dining, the proposed initial study violates the California Environmental Quality Act ["CEQA"]. The initial study postpones analysis of whether substantial evidence exists for significant environmental effects, until the sequential initiation of each private development and public improvement proposed in the Downtown Specific Plan [DSP.] CEQA and case law categorically prohibit this proposed piecemeal approach for environmental review by the initial study of the DSP project.

For example, the initial study states, "*...future activities implemented in accordance with the proposed Specific Plan could change community aesthetics.*" [Initial Study; Pg. 32, ¶ 3]

Per CEQA, mitigated negative declarations may not have future environmental effects.

Section 2 addresses the CEQA Guidelines that require the initial study to provide:

- 1) An accurate project description of the future Downtown that will result from the DSP; and,
- 2) Systemic analyses to determine whether substantial evidence exists that the total cumulation of developments and improvements in the future Downtown may result in significant environmental effects.

The initial study lacks the required systemic environmental review of cumulative effects, for example, noise and scenic vista impairment from multiple developments. [Exhibits 1 & 2]

Section 3 presents substantial evidence that the proposed DSP will result in significant environmental effects from 2<sup>nd</sup>-floor outdoor dining and balcony encroachments. For such factual evidence, the councilmembers need to look no further than the record of Shade Hotel and 900 Club, which includes many hearings on noise, arrests and court filings.

The DSP mitigated negative declaration ["MND"] does not address implementation and operation of the future Downtown, as required by CEQA. In that case, before DSP approval, **Section 2 shows that the city may have to prepare an Environmental Impact Report ["EIR"].**

In addition, the DSP fails to consider increased parking requirements, from expanding current restaurant use with 2<sup>nd</sup>-floor outdoor dining, including balconies. Regarding the latter, the initial study also fails to evaluate the cumulative impact on pedestrian scenic vistas, blocked by sidewalks blanketed overhead with umbrella-covered balcony encroachments. [Exhibit 2]

For example, the 2011 Strand House permitting process for balcony encroachments illustrates the difficulty of complying with state and city regulations. As substantiated in Section 3, to enable balconies, city staff deliberately misstated the parking analysis by inflating predecessor Beaches public use area by 437 SF, from the actual 3,752 SF to 4,189 SF.

This and other misrepresentations understated the Strand House parking requirement by eight spaces, as attested by architect Michael Rendler in a deposition. [ATTCH 2, Pg. 23] Regarding impacts on scenic vistas, Strand House grossly distorted the balcony rendering, and thereby, fooled the 2011 city council that no visual impact would occur. [Exhibit 2]

The sole 2<sup>nd</sup>-floor outdoor dining with balcony encroachments became a reality in the city, because Strand House and city staff blatantly misrepresented material facts. [ATTCH 2]

Fortunately, a way exists to resolve the deficiencies in the mitigated negative declaration. Prohibit 2<sup>nd</sup>-floor outdoor dining in the Downtown, including balcony encroachments. In addition, the council should not overrule the planning commission, by approving the two-foot height exception for roof-top equipment and pitched roofs.

Prohibiting these developments proposed by the DSP will eliminate much of the need for systemic analyses of the future Downtown. Otherwise, the city must analyze the total area for potential noise and scenic vista impacts, from the cumulation of multiple developments with 2<sup>nd</sup>-floor outdoor dining, balcony encroachments and height increases.

By excluding the above developments, staff can probably can modify the mitigated negative declaration to comply with CEQA requirements. Noise and scenic vista impact constitute the most difficult environmental effects to accurately model and evaluate.

The DSP project has opened a legal Pandora's Box of potential environmental effects, from which the council must step back, to obtain the proper perspective.

Zoning regulations permit 2<sup>nd</sup>-floor outdoor dining and balcony encroachments. The code does not, however, permit the two-foot height limit exemption for roof-top equipment and pitched roofs. [Manhattan Beach Municipal; Code "MBMC" 10.60.050] The planning commission ["PC"] determined substantial evidence exists that the DSP may create significant environmental effects. Consequently, they approved mitigation measures, including one for noise [MND Pg. 71, ¶12] The initial study, however, conducted no analysis to verify mitigation.

CEQA prohibits the council from putting this substantial-evidence cat back into the bag. To mitigate the significant environmental effects verified by the PC, the council must act to ensure that the DSP addresses those effects. Section 2 demonstrates the proposed MND fails to do so, because it pushes the required environmental analysis and mitigation into the future.

Therefore, to approve the Downtown Specific Plan and MND, the city council has only two options: 1) Enable a valid mitigated negative declaration by prohibiting 2<sup>nd</sup>-floor dining, balcony encroachments and height increases; or, 2) **Prepare an Environmental Impact Report**, pursuant to California Code of Regulations ["CCR"] 15063(b)(1)(A).

**No reason exists why the council cannot condition 2<sup>nd</sup>-floor use, per Option 1 above.**

Otherwise, the city risks losing control over the Downtown Specific Plan to the Coastal Commission. For long-range land-use plans in the coastal zone, CEQA assigns compliance responsibility to the Coastal Commission. [CCR 15265(b) & (c)] When the DSP comes before the commissioners, it seems highly unlikely that they will approve the fatally-flawed Initial Study, Mitigated Negative Declaration, as summarized above.



## **2. CEQA PROHIBITS A PIECEMEAL APPROACH FOR THE MITIGATED NEGATIVE DECLARATION.**

### **The Downtown Specific Plan and Code Amendments Constitute a CEQA Project.**

The Downtown Specific Plan and code amendments constitute a CEQA project, defined as: *"An activity directly undertaken by any public agency including...enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof...: [CCR 15378(a)(1)]*

In total, the DSP CEQA project comprises amendments to the zoning code, zoning map and Local Coastal Program, as well as the Downtown Specific Plan and the Initial Study, Mitigated Negative Declaration.

### **The Initial Study Environmental Review Must include the Future Downtown in Entirety.**

Per CCR 15063(a), *"Following preliminary review, the Lead Agency shall conduct an Initial Study to determine if the project may have a significant effect on the environment."*

The environmental review requires that, *"All phases of project planning, implementation and operation must be considered in the Initial study of the project."* [CCR 15063(a)(1)]

This requires the initial study to conduct the environmental review based on a model of the future Downtown, as it will result from developments permitted by the DSP.

The initial study methodically violates the above CEQA requirements. It defers environmental review of all new activities enabled by the DSP, until such time when the private developments and public improvements occur.

In violation of CEQA [*ibid.*], the MND fails to address "implementation and operation" of the future Downtown, per the following statement. *"The proposed Specific Plan is a policy-and regulatory-level document that does not include any development proposals; therefore, it would not directly result in physical environmental effects due to the construction and operation of facilities."* [Pg. 14, ¶ 3; Emphasis added] The specific plan repeats this statement many times.

Nothing could be further from the truth. The DSP Attachment *"Redline Strikeout, Chapters 4, 6, 9 Only"* identifies many changes to land-use designations and development standards, as executed in the municipal code and Local Coastal Program ["LCP"]. On October 26, the Planning Commission approved Resolutions Nos. PC 2016-07 and 2016-09, which amend the municipal code and the LCP, respectively.

Consequently, as a project comprising these code amendments, the DSP may result in significant environmental effects, thereby totally debunking the above quoted erroneous claim. This fact invalidates the proposed MND, which has as its foundation, that no developments with significant environmental effects will occur. The initial study admits that such developments will occur, but postpones the environmental review until implementation, which violates CEQA requirements that require the DSP to address "implementation and operation."

As shown immediately below, because the DSP may result in significant environmental effects and has an invalid mitigated negative declaration, prior to approval, **the city must instead prepare an Environmental Impact Report.**

A Mitigated Negative Declaration Project May Not Result in Significant Environmental Effects.

CEQA requires that the DSP project can have no significant environmental effects. In the description of 2<sup>nd</sup>-floor outdoor dining, however, the initial study conspicuously fails to address scenic vista impacts from balcony encroachments along both sides of Manhattan Beach Blvd. The MND states, "...the proposed Specific Plan would have no direct impact on visual resources..." [MND Pg. 32, ¶3] What about the balcony encroachments? Staff ignored them.

If the initial study "*determines that there is substantial evidence that any aspect of the project, either individually or **cumulatively**, may cause a significant effect on the environment,*" then the city must take one of the two actions below. [CCR 15063(b)(1), emphasis added]

The city must either: 1) **Prepare an EIR** or invoke previous EIR's or other appropriate processes [*ibid.*]; or, 2) Prepare a mitigated negative declaration. [CCR 15064(f)(2)]

After choosing Option 2 above, staff violated CEQA conditions for preparing the MND.

For a mitigated negative declaration, CEQA mandates that [Emphasis added]:

(1) *Revisions in the project plans or proposals made by, or agreed to by the applicant [City] before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and*

(2) *There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.* [CCR 15074(b)]

The initial study repeatedly acknowledges that future developments enabled by the DSP may have significant environmental effects, which the city will address after DSP approval.

For example, the initial study acknowledges that 2<sup>nd</sup>-floor outdoor dining may require noise mitigation, but postpones implementation until, "*Timing/Implementation: During Use Permit or Building Permit Review.*" [Initial Study; Pg. 71, ¶ 2]

This postponed timing precludes analysis of cumulative noise impacts from multiple developments, such as CEQA Checklist Environmental Factor 12 (c). "*[Would the project result in] A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?*" [*ibid.* Pg. 70, Table]

Staff proposes to push environmental analysis and mitigation implementation into the future, which renders the mitigated negative declaration invalid, per CCR 15074(b) above.

Consequently, per CCR 15063(b)(1) above, **the city must take Option 1 above and prepare an Environmental Impact Report, prior to approving the DSP.**

Case Law Prohibits Piecemeal Environmental Review.

Case law prohibits piecemeal environmental review, which evaluates a project in pieces too small to cause significant effects. Staff has resorted to this well-worn ploy, to sidestep cumulative evaluation of environmental effects, which CEQA requires. [CCR 15063(b)(1) above]

This letter lacks authority to address case law. Please consider, however: *Orinda Ass'n v Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171-2 [*"The requirements of CEQA, 'cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.'*" citing *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d 188, 195-196.]



### **3. Substantial Evidence of DSP Significant Environmental Effects.**

This section provides substantial evidence that the DSP as proposed will result in significant environmental effects.

Per CCR 15384(b), *"Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."* This section of the letter primarily provides facts for substantial evidence.

#### **Shade Hotel Substantial Evidence Facts**

During 2009-2014, on 22 occasions, the city council heard residents' complaints about Shade Hotel noise. To mitigate the impacts, the council amended the use permit twice, once in 2010 and again in 2014. For both amendments, acoustic expert Behrens & Associates conducted noise measurements and proposed noise mitigation, subsequently implemented.

Principally, the mitigation encompassed complete enclosure of the bar, lobby and patio with sound-suppressing materials. Behrens required the east patio glass wall facing the residential district to have all gaps sealed.

As shown in DSP Fig. 4.2, Exhibit 1, the entire east side of Shade Hotel and other Metlox tenants will have 2<sup>nd</sup>-floor outdoor dining facing the residential areas, presumably with encroaching balconies. This permitted use extends south to the Vons parking lot. For noise mitigation from the open east side of the dining areas, the initial study proposes a 42-in high safety railing made of Plexiglas, leaving the top five-feet open.

Compare that to Behrens sealing even the smallest holes in the Shade east wall.

The initial study includes no environmental analysis to support the above plan. The absurdity of the mitigated negative declaration on 2<sup>nd</sup>-floor outdoor dining knows no bounds.

During the five years of 22 Shade hearings, on the record, many residents testified about noise. The Exhibit 1 map of 2<sup>nd</sup>-floor outdoor dining shows locations for three houses, with ranges from Shade exceeding 300 feet in some cases, and at angles greater than 45 degrees from perpendicular to the hotel.

In Exhibit 1, the dashed red contour represents a crude systemic estimate of 300-foot range from multiple 2<sup>nd</sup>-floor outdoor dining patio and balcony encroachments in the Downtown, as proposed by the DSP. The 300-foot range estimate represents ground-floor sources with open windows and doors. The noise range for 2<sup>nd</sup>-floor outdoor dining will significantly exceed 300 feet.

In contrast, staff prepared their DSP Fig. 4.2 map for 2<sup>nd</sup>-floor dining using a vastly overly-simplified acoustics model. They assumed sound stops at the first zoning boundary and that it propagates perpendicular from the building front, rather than fanning out, as is the case.

Consequently, the DSP Fig 4.2 map for permitted 2<sup>nd</sup>-floor dining has no validity, **thereby invalidating the mitigated negative declaration for 2<sup>nd</sup>-floor outdoor dining.**

#### **900 Club Substantial Evidence Facts.**

The two-story nightclub at 900 Manhattan Ave holds a storied and unique place in Manhattan Beach annals. The city has brought use-permit revocation proceedings against no other premises, but has done so twice against 900 Manhattan Ave, once in 1994 and once in 2014, per the 900 Club record.

As illustrated in the Exhibit 1 map, two 10<sup>th</sup> St residents will submit testimony at the December 6 hearing that noise from the 900 Club and from 901 Manhattan Ave has irritated and annoyed them, constituting a public nuisance.

The 901 Manhattan Ave disturbances illustrate the difficulty of using acoustic models to evaluate environmental effects. This premises faces east, so the disturbing noise heard near Ocean and 10<sup>th</sup> St results from reflecting off buildings across Manhattan Ave.

In the 2014 use-permit hearings for the 900 Club, the city required west-facing doors and windows closed. **The city council should contrast their conditions to enclose 900 Club, versus the 2<sup>nd</sup>-floor outdoor dining proposed for Manhattan Ave a few blocks north.**

#### Strand House Substantial Evidence Facts.

Strand House has the only balcony encroachments for outdoor dining, the ultimate imposition on pedestrians passing below. These balconies came into being, only because city staff and Strand House misrepresented material fact in the use-permit proceedings. [Attch. 2]

Exhibit 2 illustrates that Strand House distorted the balcony renderings, to fool the 2011 city council into believing no view impact would occur. More importantly, Exhibit 2 shows that the multiple encroachments over the sidewalk cumulatively block pedestrian scenic vista of the pier Roundhouse, starting from Manhattan Ave.

Thereby, these balconies cumulatively violate CEQA Guidelines Appendix G, Checklist Item I, Aesthetics, as well as the Coastal Act PRC 30250 & 30251. Both statutes protect scenic vistas, such as the Manhattan Beach Pier, a state historic landmark. The DSP initial study, however, ignores the cumulative impacts of multiple balcony encroachments on scenic vistas, **one more deficiency that invalidates the mitigated negative declaration.**

#### Noise Direct Line of Sight to From 2<sup>nd</sup>-Floor Patios to Residences, Substantial Evidence Facts.

The initial study conducted no analysis of noise from the multiple 2<sup>nd</sup>-floor outdoor dining patios that will result from the DSP. This subsection provides a top-level analysis that noise disturbances will occur, thereby establishing that substantial evidence exists for such environmental effects.

Exhibit 3 provides a model for a surrogate noise-source, based on 2011 measurements taken at Simmzy's, 229 Manhattan Beach Blvd. As Exhibit 3 shows, a 2<sup>nd</sup>-floor Simmzy's will create highly audible noise 100's of feet away.

Exhibit 4 provides a collage of photographs showing that many residences will have line of sight exposure to the multiple 2<sup>nd</sup>-floor Simmzy's-replicas, at ranges of less than 200-feet.

The initial study pushes noise analysis into the future, so thereby fails to meet the CEQA requirement to conduct such evaluations prior to approval. **This failure further invalidates the mitigated negative declaration.**

#### **4. CONCLUSIONS AND FORMAL REQUESTS.**

This letter proves the invalidity of the DSP initial study and mitigated negative declaration, for the following reasons:

1. The initial study does not address the implementation and operation phases of the future Downtown that will result from the DSP;
2. The mitigated negative declaration improperly pushes analysis of environmental effects and mitigation into the future, when the developments of the future Downtown will materialize;
3. The mitigated initial declaration proposes a piecemeal evaluation of environmental effects from developments, thereby sidestepping the requirement for a cumulative analysis;
4. After approval of the DSP project, substantial evidence exists that significant environmental effects will remain unmitigated;
5. The initial study and mitigated negative declaration fail to address impacts on scenic vistas by balcony encroachments for 2<sup>nd</sup>-floor outdoor dining; and,
6. The city noise analysis for determining the map of 2<sup>nd</sup>-floor outdoor dining has no validity.

#### **Formal Requests.**

This letter will serve as a formal notice for the following requests:

1. Pursuant to MBMC 10.04.104.030 (D)(1) & (2) and 7.36.110, the Director of Community Development shall consider amendment of the Strand House use permit and revocation of the balcony encroachments, based on the attached ATTCH 2 document, that lists many misrepresentations of material fact by the applicant and city staff, during the 2011 use permit process;
2. Pursuant to MBMC 7.36.110, the Director of Community Development shall consider revocation of the balcony encroachment for 211/213 Manhattan Beach Blvd., as not compliant with the 2013 application and use permit; and
3. The DSP administrative record shall include by reference, the administrative records of Shade Hotel, 900 Club and Strand House, since 2004.

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Exhibits 1, 2, 3 &4

Attachment: ATTCH 2 [Strand House Misrepresentations of Material Fact]

## EXHIBIT 1

### 2<sup>nd</sup>-FLOOR OUTDOOR DINING IMPACTS MANY RESIDENCES

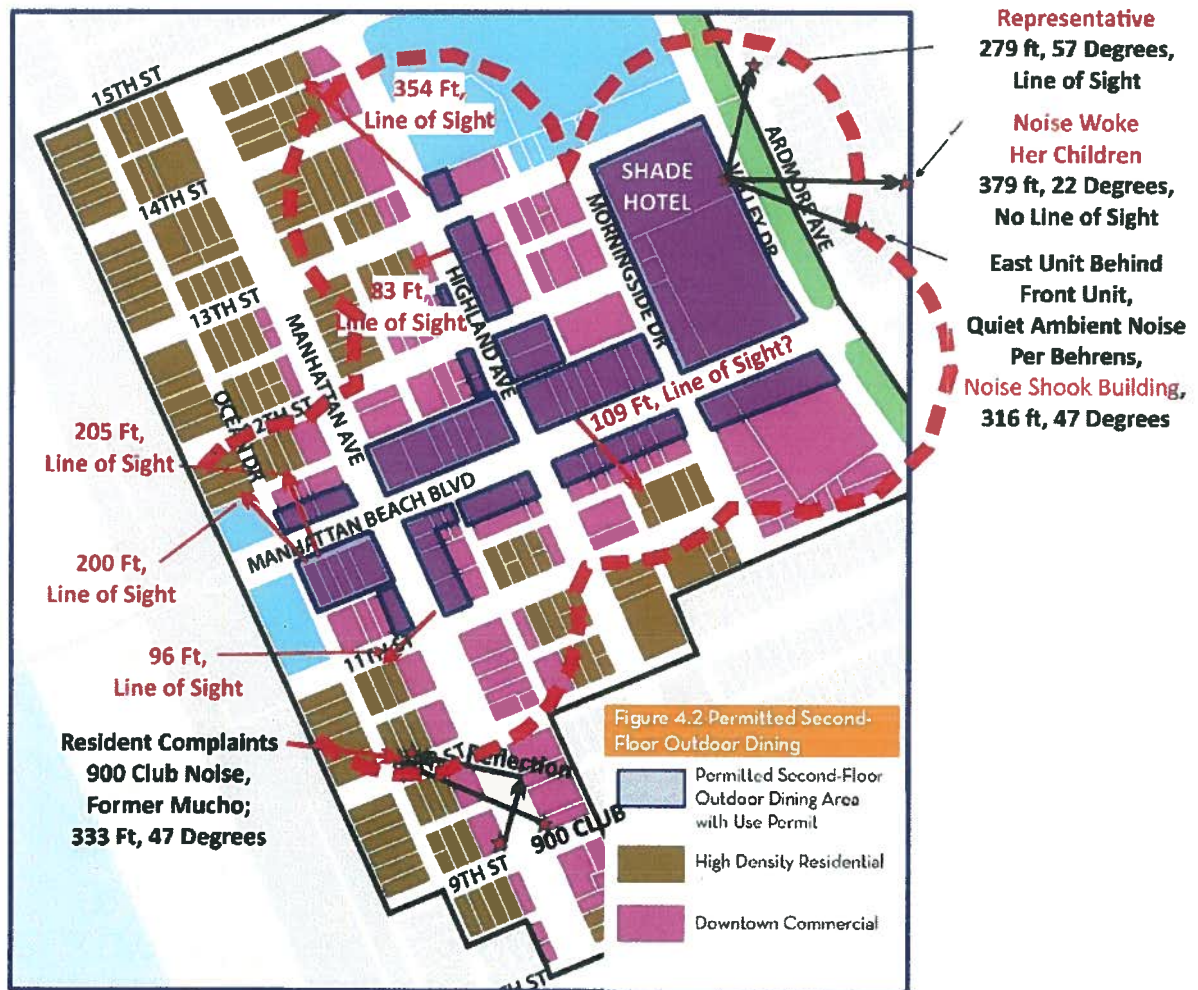
Noise range based on ground-floor sources;

2<sup>nd</sup>-Floor outdoor dining will have far greater range

#### Initial Study uses overly-simplistic noise model

- Noise does not pass beyond first zoning boundary; and,
- Noise goes 90-degrees out from building; does not fan as is the case

#### ■ ■ ■ ■ ■ 300-Foot Noise Range, Ground-Floor Sources

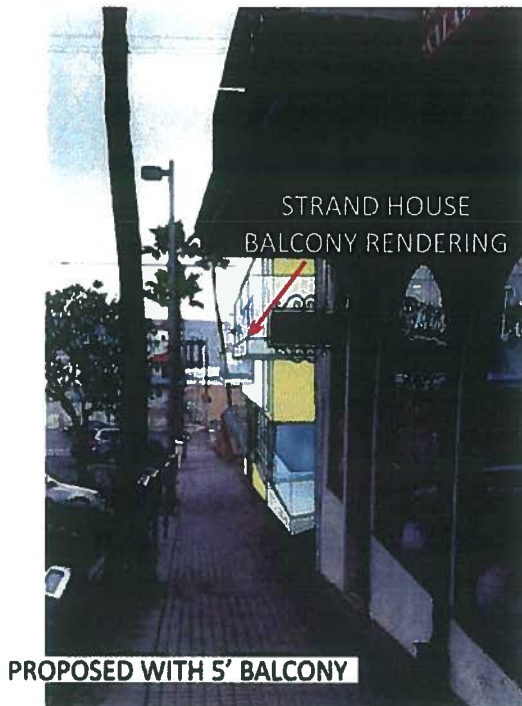




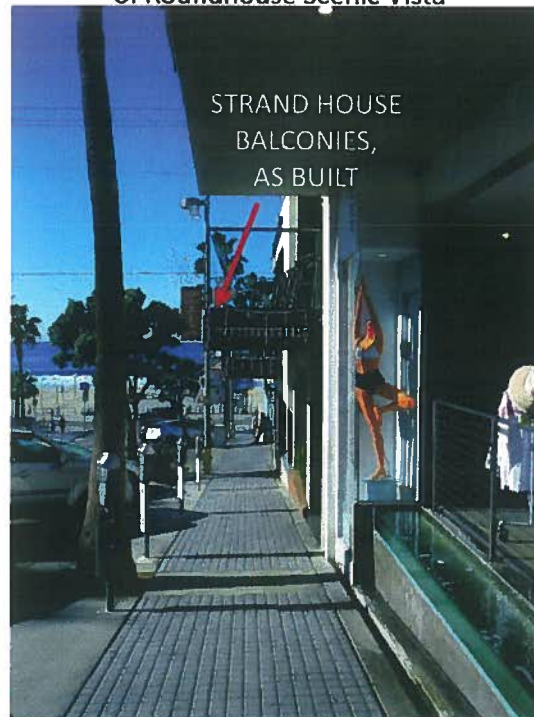
## EXHIBIT 2

### STRAND HOUSE DISTORTED BALCONY RENDERING TO CONCEAL VIEW IMPACT

Strand House Distorted Balcony Rendering  
to Conceal Impact on Scenic Vista  
of Pier Roundhouse



Strand House Balconies As Built  
Block Pedestrian View  
of Roundhouse Scenic Vista



2011 City Council and Staff  
Arbitrarily Dismissed Accurate Rendering  
of Balconies Blocking Roundhouse View



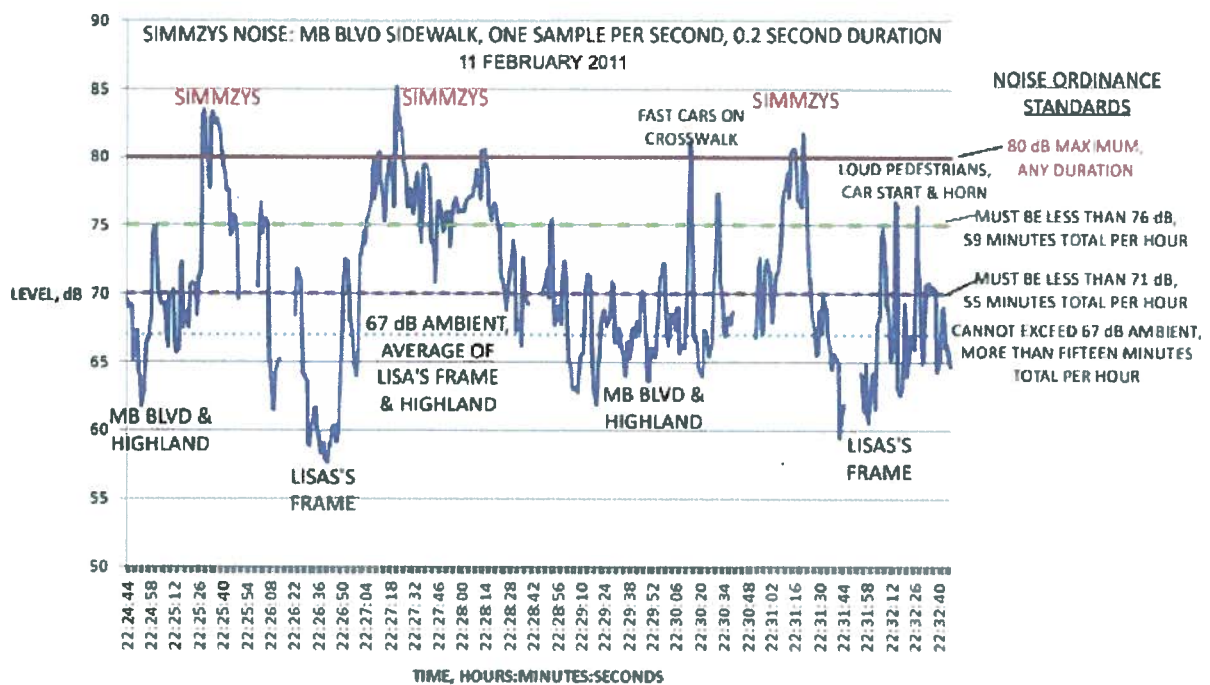
Three Encroachments Cumulatively Block  
Scenic Vista of Pier Roundhouse  
For Pedestrians at Manhattan Ave



### EXHIBIT 3

## SIMMZYS PROVIDES MODEL FOR 2<sup>nd</sup>-FLOOR OUTDOOR DINING NOISE SOURCE

- On front sidewalk, exceeds all exterior standards in noise ordinance, MBMC 5.12.160
- Dominates ambient noise background at MB Blvd-Highland intersection, 150 feet & 45 Degrees
- On 2<sup>nd</sup>-floor in line of sight to residences, will be clearly audible at 300-foot range

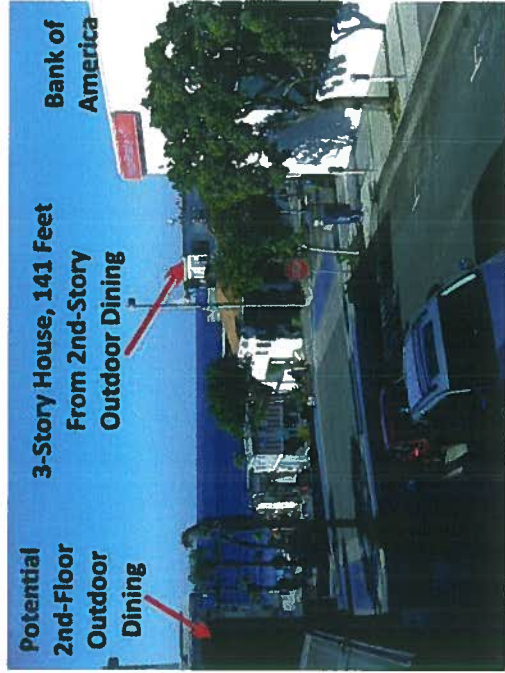




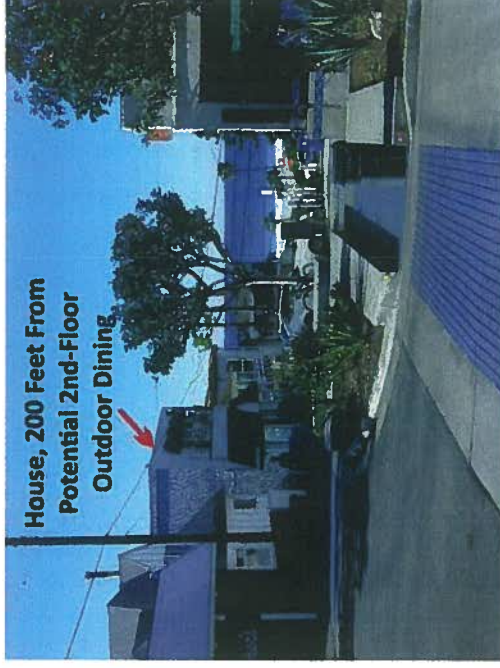
**MANY RESIDENCES WILL SUFFER NOISE DISTURBANCES  
FROM SIMMZY'S-STYLE 2<sup>ND</sup>-STORY OUTDOOR DINING**



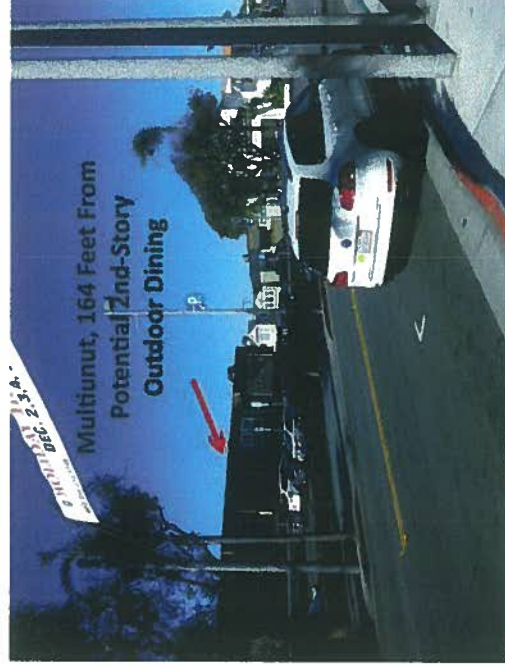
Residence South Patio, 120 12th Street



Southeast Corner of 12th St & Manhattan Ave



Northwest Corner of 11th St & Manhattan Ave



13th St & Manhattan Ave



**City of Manhattan Beach Downtown Specific Plan  
Summary Responses to Comments Received Prior to the  
City Council Hearing on December 6, 2016**

The public review period for the Initial Study and Proposed Mitigated Negative Declaration (MND) for the City of Manhattan Beach Downtown Specific Plan and Local Coastal Program Amendments Project commenced on August 25, 2016, and ended on September 23, 2016. Responses to comments received on the proposed MND during the public comment period were prepared and are included in the record of proceedings. After the close of the public review period and prior to the City Council Hearing to consider adoption of the proposed Specific Plan on December 6, 2016, additional project comment letters were received by the City, several of which raised potential environmental issues. Summary responses to such comments are presented below:

- **“Piecemeal Approach”:** Comments allege that the IS/MND improperly “piecemealed” the environmental analysis and claim that the IS/MND does not address implementation and operation phases. In contrast to this assertion, the IS/MND considers all phases of the proposed Specific Plan, including planning, implementation, and operation. The IS/MND evaluates all phases of the proposed Specific Plan at the programmatic level and properly allows for detailed, site-specific information to be evaluated at the project-level when specific development projects are proposed. This approach to analysis is consistent with CEQA’s mandate that the analysis be guided by the standards of practicality and reasonableness. CEQA specifies that the degree of specificity required in the environmental analysis must correspond to the degree of specificity involved in the underlying activity which is proposed. CEQA does not require the analysis of impacts that are too speculative to evaluate.
- **“Deferral of Mitigation”:** Comments allege that the IS/MND “improperly postpones environmental analysis and mitigation specification.” As noted above, CEQA specifies that the degree of specificity required in the environmental analysis must correspond to the degree of specificity involved in the underlying activity which is proposed. The analysis presented in the IS/MND follows CEQA’s guidance for evaluating programs and policies (i.e., a program-level analysis). Given the nature of the project as a long-range land use plan without any specific private development identified, some of the mitigation measures properly identify performance standards which would mitigate the potentially significant effect of the project and which may be accomplished in more than one specified way. As one specific example, Mitigation Measure NOI-1 requires that any future second-floor outdoor dining operation comply with the “Exterior noise standards” identified in the Manhattan Beach Municipal Code. This measure recognizes that meeting such standards could be achieved in multiple ways, such as through the use of sound-rated Plexiglas parapets, noise curtains, operational techniques, or other methods depending on the location and physical characteristics of the second-floor dining operation (none of which are known by the City at this time).
- **Aesthetic Impacts of Outdoor Dining Balconies:** Comments allege that potential future outdoor dining balconies that project over the sidewalk (i.e., encroach into the public right-of-way) could cause aesthetic impacts related to views. The proposed Specific Plan does not provide for outdoor dining balconies that project from the building facade. Rather, the proposed Specific Plan only

allows outdoor dining within the second-floor on private property, and imposes additional restrictions.

- **Noise Impacts of Outdoor Dining:** Comments allege that the analysis of the potential noise impacts of second-story outdoor dining in the IS/MND is insufficient. Such comments conflate the IS/MND's noise mitigation measure with the distance between residential uses and the area identified as "Permitted Second-Story Outdoor Dining Area with Use Permit" on Figure 4.2 of the proposed Specific Plan. The noise analysis in the IS/MND considers the potential for future second-story outdoor dining and analyzes potential noise impacts qualitatively, since no proposals for actual second-story outdoor dining are currently contemplated or known to the City. The analysis concludes that such outdoor dining operations have the potential to cause a significant noise impact and identifies Mitigation Measure NOI-1 to ensure that any future second-floor outdoor dining operation comply with the "Exterior noise standards" identified in the Manhattan Beach Municipal Code. Compliance with these standards ensures that potential noise impacts related to second-story outdoor dining would be less than significant.
- **Specific Plan Allowance of Second-Story Outdoor Dining:** Many of the potential environmental concerns expressed by the comments relate to second-story outdoor dining (e.g., noise and aesthetics). It is important to reiterate that the proposed Specific Plan is more restrictive of second-story outdoor dining than the current Zoning Code. Second-story outdoor dining is currently allowed throughout the Downtown area with the issuance of a Use Permit. The proposed Specific Plan would restrict (rather than allow) second-story outdoor dining to a limited set of parcels in the Downtown area and only with the issuance of a Use Permit. Thus, if adopted, the Specific Plan restrictions on second-story outdoor dining would lessen the environmental impacts arising from such uses as currently permitted.