

# Exhibit D

This page intentionally left blank.

MONTEREY COUNTY PLANNING DEPARTMENT

APPLICATION FOR:  
USE PERMIT, VARIANCE, SPECIAL PERMIT, ZONING PERMIT, REZONING, "SC" PERMIT, CDP

1. Applicant's Name: SHADE ENTERPRISES LIMITED, A CALIFORNIA CORPORATION  
 Address: 2590 El Camino Real City: Salinas  
 Telephone: 663-3842 or 375-7412 Zip: 93907
2. Applicant's interest in property (Owner, Buyer, etc.): Lessee
3. Person(s) to be notified of hearing:  
 Name: Steven M. Gordon, Inc. (Attorney for Shade Enterprises Ltd., A California Corporation)  
 Address: 344 Salinas Street, Suite III City: Salinas  
 Telephone: 757-5246 Zip: 93901
4. Property Owner's Name: Lawrence Clark  
 Address: 611 Rochex Ave. City: Salinas  
 Telephone: 449-5650 Zip: 93906
5. Property address and general location: West corner of Messick Road and Highway 101
6. Assessor's Parcel Number: 125-501-22 changed to 125-501-55
7. Zoning: H. 1 P., B-4, P.M.
8. Property area (acres or square feet): Approximately one acre
9. Present and past use of project site and adjoining properties: Site has been utilized for automobile storage since at least April 11, 1979, when the prior Use Permit was granted. (PC-3576)
10. What is this request for (the use, etc.): To continue to utilize approximately one acre for automobile storage only.
11. a) Variance requested: \_\_\_\_\_  
 b) Why is the Variance necessary, explain hardship (use extra paper, if needed): \_\_\_\_\_
12. REZONING OR AMENDMENT ONLY: The applicant wishes to amend Section      Title 20 (Zoning), Section 20.060.70 (Sectional District Maps) of the Monterey County Code, from a      Zoning District to a      Zoning District to allow
13. If new construction is proposed:
  - a) Residential: Type and total number of units (one-story single family, six two-story duplexes, etc.): \_\_\_\_\_
  - b) Commercial or Industrial (Retail, Office, Warehouse, etc.), square footage, number of employees: \_\_\_\_\_
  - c) Height of structure(s): \_\_\_\_\_
14. Parking: Number of covered spaces: \_\_\_\_\_  
 Number of uncovered spaces: \_\_\_\_\_  
 Number of loading spaces: \_\_\_\_\_
15. Will grading or filling be required: Yes \_\_\_\_\_ No x Cubic yards \_\_\_\_\_
16. Will trees be removed: Yes \_\_\_\_\_ No x If yes, how many, how large, what type: \_\_\_\_\_
17. Will other vegetation be removed: Yes \_\_\_\_\_ No x If yes, what type: \_\_\_\_\_
18. Describe the property as viewed, including all natural and man-made features (use extra paper, if needed): The area is improved with a wooden fence and has, and now does, contain numerous automobiles stored

PORTION OF LOT 197,  
 AND EIGHTH MAP 15,  
 BARBA NUEVA & Y NORO COJO SO.

19. How will water be supplied: Water is not required
20. How will sewage or other wastes be disposed: There is no sewage or waste disposal required
21. Will the project require placement of structures, roads, cuts or fills on cross slopes of 30% or greater: yes \_\_\_ No x \_\_\_
22. Will any persons be displaced as a result of this project: Yes \_\_\_ No x \_\_\_ If yes, how many: \_\_\_\_\_
23. Is this land being farmed: Yes \_\_\_ No x \_\_\_
24. Is this land used for grazing: Yes \_\_\_ No x \_\_\_
25. Discuss any mitigation measures that are proposed to reduce environmental impacts that might result from this project (use extra paper if needed): \_\_\_\_\_

SHADE ENTERPRISES BY TONY SHADE, LESSEE  
OWNER'S NAME (PLEASE PRINT)

Tony Shade by A. Gordon  
OWNER'S SIGNATURE

I certify under penalty of perjury that I am authorized by the owner(s) of the described property to make this application:

Dated: October 4, 1985 at Salinas, California.

Steven M. Gordon, Inc. by Steven M. Gordon,  
AGENT'S NAME (PLEASE PRINT)  
Attorney for Shade Enterprises, Ltd. and Tony  
Shade

Steven M. Gordon  
AGENT'S SIGNATURE

FOR DEPARTMENT USE ONLY

DATE RECEIVED: \_\_\_\_\_ RECEIPT NO. \_\_\_\_\_

FILING FEE: \_\_\_\_\_ ENVIRONMENTAL FEE: \_\_\_\_\_

\_\_\_ HEALTH DEPARTMENT SERVICE LETTER

\_\_\_ ADEQUACY OF ACCESS REPORT

✓ ADVISORY COMMITTEE AL

\_\_\_ WILL LOG

MONTEREY COUNTY PLANNING DEPARTMENT  
P. O. BOX 1208  
SALINAS, CA 93902  
(408) 422-9018

1/16/85  
D3

PLANNING COMMISSION  
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 86-4

A.P. # 125-501-55

FINDINGS AND DECISION

In the matter of the application of Lawrance Clark (PC-5496) for a Use Permit in accordance with Title 20 (Zoning) Chapter 20.96 (Use Permits) of the Monterey County Code, to allow an automobile storage yard, located on portion of Lot 197, Assessor's Map 15, Bolsa Nueva y Moro Cojo Rancho, Prunedale area, fronting on and easterly of Highway 101 at Messick Road, came on regularly for hearing before the Planning Commission on January 8, 1986.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. Finding: That the proposed project is not consistent with the North County Area Plan.  
Evidence: The parcel is located in an area designated as "Commercial", which the North County Area Plan specifically defines as applying to "areas which are suitable for development of retail and service commercial uses, including visitor accomodation and professional office uses". The proposed use, as a storage-type facility, is consequently not consistent with the "Commercial" land use designation. Further, it is also not consistent with the types of uses that the Planning Commission has approved and encourages in the "Commercial" designated areas of Prunedale.
2. Finding: That the project will have a significant visual impact which cannot be adequately mitigated.  
Evidence: The parcel is highly visible from Highway 101, due to its location directly off of the highway. As well, it is easily viewed from other parcels in the vicinity, due to the topography. The visual impact of such a project is significant. Adequate mitigation of this impact is not possible. As seen from Highway 101, only partial mitigation is provided by the fence and by landscaping; passers-by are still able to see the existing operation. Also, no feasible mitigation exists for residences and businesses located higher than, and thus looking down on, the operation. To their unrestricted view, the auto impoundment yard creates an undesirable visual impact, which cannot be adequately mitigated.
3. Finding: That the project has an impact of undetermined significance on local ground and surface waters.  
Evidence: At the Planning Commission hearing of January 8, 1986, public testimony indicated that oil and gas leakage related to the operation is having an impact on local ground and surface water quality. The issue, currently under review by the Health Department, has not been resolved to the extent that the project can be said to have an insignificant impact on the environment.

4. Finding: That the project has an undesirable impact on the commercial and residential nature of the area.  
Evidence: The applicant operates the storage/impoundment yard in conjunction with a wrecking yard located north of the storage yard along the frontage road. Autos are transported from the storage yard to the wrecking site in order to be dismantled, crushed, or otherwise utilized in the wrecking business. At the Planning Commission hearing of January 8, 1986, public testimony identified several problems related to the two operations. Parked cars and auto transport between the two businesses cause traffic congestion along the frontage road and at the intersection of Messick Road and Highway 101. Also, the operation leaves glass and other objects in the road, which is a safety hazard and has caused flat tires. Further, the unsightly appearance of the operation is a detriment to the character of the area. Each of these problems has a negative impact on both local residents and on customers of the local businesses along the frontage road.
5. Finding: That the applicant has a history of zoning violations on the previous use permit (PC-3576) for the auto storage yard.  
Evidence: Past zoning violations include storage of autos outside of the fenced area, stacking of cars above the fence, and minimal landscaping. Further, the operation continued illegally after the previous use permit expired.

Decision

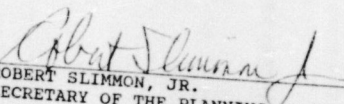
THEREFORE, it is the decision of said Planning Commission that said application for a Use Permit be denied.

PASSED AND ADOPTED this 8th day of January, 1986, by the following vote:

AYES: Calcagno, Caiotto, Evans, Glau, Hendrick, Jimenez, Reaves, Riddle

NOES: Mill

ABSENT: None

  
ROBERT SLIMMON, JR.  
SECRETARY OF THE PLANNING COMMISSION

Copy of this decision mailed to applicant on January 23, 1986.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE FEBRUARY 2, 1986.

MONTEREY



COUNTY

NOTICE OF APPEAL

Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)

JAN 29 1 59 PM 1986  
TAMOTIL KEMBLE  
MEMBER BOARD  
DEPUTY

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 2/2/86.

1. Please give the following information:

- a) your name SHADE ENTERPRISES LIMITED, A California Corporation
- b) address 2590 El Camino Real North
- c) phone number 663-3842 or 375-7412

2. Indicate your interest in the decision by checking the appropriate box

- a) applicant
- b) neighbor
- c) other (please state) \_\_\_\_\_

3. If you are not the applicant, please give the applicant's name.

\_\_\_\_\_

4. What is the file number of the application that is the subject of this appeal?

	<u>TYPE OF APPLICATION</u>	<u>AREA</u>
a) PC- 5496	Use Permit	Approximately one acre.
b) ZA-		
c) MS-		

5. What is the nature of your appeal?

- a) Are you appealing the approval  or the denial  of an application? (Check appropriate box)
- b) If you are appealing one or more conditions of appeal, list the condition number and state the condition(s) you are appealing (Attach extra sheet if necessary)

Denial of Use Permit for Automobile Storage Yard.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

- a) there was a lack of fair or impartial hearing; or
- b) the findings or decision or conditions are not supported by the evidence; or
- c) the decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

See attached pages

---

---

---

---

---

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, or Minor Subdivision Committee). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

See attached pages

---

---

---

---

---

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Planning Department will provide you with a mailing list.

\* 9. Your appeal is accepted when the Clerk to the Board of Supervisors accepts the appeal as complete on its face, receives the filing fee and stamped addressed envelopes, and places the appeal on the Board of Supervisors agenda so that the Board may set the matter for a public hearing.

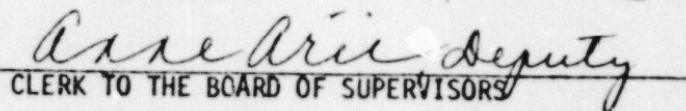
APPELLANT SIGNATURE



DATE

28 Jan 86

ACCEPTED

  
CLERK TO THE BOARD OF SUPERVISORS

DATE

Jan. 29, 1986

Copies: Original to Clerk to the Board  
One Copy to the Planning Department

\*FILING FEE: \$50.00



ATTACHMENT TO QUESTION 6

Applicant was denied a fair hearing because Commissioner Glau testified at the conclusion of the hearing that he believed an unknown named applicant would soon submit a proposal for a shopping center development on the West side of Highway 101, opposite the location of applicant's property, and that the shopping center might have a view of the storage yard facility. The applicant was not allowed to submit evidence or testimony in rebuttal of Commissioner Glau's testimony. An application was not then pending for a shopping center.

The findings are not supported by the evidence. City staff testified to the Commission that numerous letters were submitted strongly in favor of the application for use permit. There were letters from various law enforcement agencies and automobile towing companies in support of the application. The applicant testified that numerous law enforcement agencies rely upon the subject automobile storage facility to store impounded cars and that all of those agencies would be without any facility to store automobiles if the application were denied. The only evidence against the use was testimony by persons who said that they received flat tires from debris in the street, and that applicant used the public street excessively. Those matters could easily be mitigated by conditions upon the use permit as urged by the Chairman.

The findings are not supported by the evidence in that the Chairman discussed with applicant's attorney during the course of the proceeding various conditions to the use-permit to mitigate adverse effects, such as cleaning litter or debris dropped from tow-vehicles, avoiding the stacking of vehicles higher than allowed by the permit, a requirement for planting additional

shrubbery and maintaining landscaping, and properly licensing any forklift servicing the storage facility. The majority of the Commissioners assented to the recommendation of the chairman. Subsequently, Commissioner Glau swayed the majority of the commissioners to change their position based merely upon his personal testimony that he believed an application for a use-permit would be submitted in the future by a person desiring to develop a shopping center on the west side of Highway 101, opposite the subject parcel, from which persons might view unsightly vehicles in the storage yard.

The decision is contrary to law because the applicant was not allowed procedural or substantive due process of law. Applicant should have been allowed the opportunity to rebut or refute the testimony of Commissioner Glau before submission of the matter to the Commission for vote.

#### ATTACHMENT TO QUESTION 7

1. Finding number one is not supported by the evidence in that testimony at the hearing revealed that the storage yard supplies automobile components for a retail business operated by the applicant along the same Highway 101 frontage road under the trade name Peninsula Auto Wreckers. The existing use is commercial and is service oriented. Automobiles are stored for customers, and dismantled parts are sold at retail at the main yard, on the same frontage road.

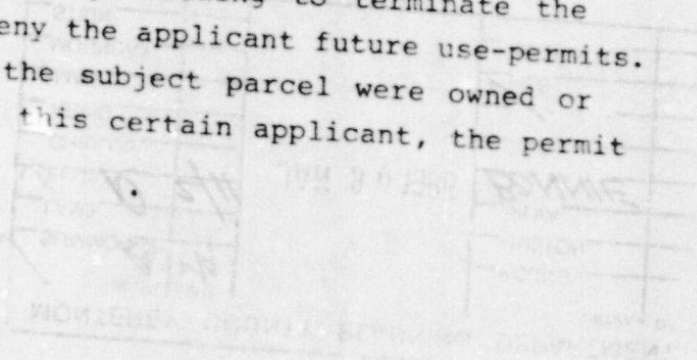
2. Finding number two is not supported by the evidence in that the only evidence that any parcel would have an unrestricted view of the applicant's operation was by Commissioner Ganau, and concerned a parcel which Commissioner Ganau said that he expected an application for use-permit to be filed in the future. He

testified that he believed it would be impossible to build a fence to shield the view of stored automobiles. Applicant was not permitted to rebut or controvert that testimony.

3. Finding number three is not supported by the evidence in that the finding recites that there were oil and gas leaks upon the premises. However, the testimony was that applicant operates an automobile storage yard on Highway 101, separated by a couple of hundred yards from the subject parcel and that certain problems with oil leakage were on the other parcel, which was not the subject of the instant hearing.

4. Finding number four is not supported by the evidence. The operation would not have an undesirable impact on the area. Applicant testified that he had been doing business at his main location, Peninsula Auto Wreckers, for 12 years, and that the main wrecking yard was perhaps the oldest in the State. There was no evidence that applicant caused or allowed any objects to be left on the road which caused flat tires. As to testimony that nails left on the road often caused flat tires, nails are sold by Freeman Lumber Company located adjacent to Peninsula Auto Wreckers. There was no testimony that applicant dropped nails or other sharp objects on the roadway. Any unsightly appearance of the facility could be mitigated by fencing and landscaping. City staff testified the storage facility was enclosed within a fence.

5. Finding number five is contrary to law in that the proper remedy for any alleged violation of a condition to a previous use-permit would be a proceeding to terminate the use-permit, rather than to deny the applicant future use-permits. The finding infurs that if the subject parcel were owned or leased by someone other than this certain applicant, the permit would be granted.



PC-5496 (3)

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

Hearing on Appeal of Shade Enterprises )  
(Lawrence Clark/PC-5496), from the )  
Decision of the Planning Commission )  
Denying Use Permit for Auto Storage )  
Yard in Prunedale Area, District No. 1, )  
Hold; Appeal Denied; Direction Given )  
to Staff to Initiate Abatement Process )  
at the End of 120 Days . . . . . )

A public hearing is held on an appeal from Shade Enterprises (Lawrence Clark/PC-5496) from the decision of the Planning Commission denying a Use Permit to allow an automobile storage yard on property located on portion of Lot 197, Assessor's Map 15, Bolsa Nueva y Moro Cojo Rancho, Prunedale Area, fronting on and easterly of Highway 101 and Messick Road, District No. 1.

Bonnie Stibbe, representing the Monterey County Planning Department, explains the reasons for the Planning Commission denial included adverse visual impacts and detrimental impacts to surrounding uses. The storage yard is presently existing under a prior Use Permit (PC-3576) which expired on May 28, 1984. On January 29, 1986, Shade Enterprises, which leases the property and operates the storage yard, appealed the Planning Commission's decision to deny the Use Permit. Mrs. Stibbe states the yard site is in a "PM" ("Planned Industrial") zoning district, and the North County Area Plan designates the parcel as "Commercial."

Steven Gordon, Attorney, addresses the Board on behalf of the applicant. He proceeds through the Planning Commission findings, stating why, in his opinion, they are not supported by the evidence. He urges the Board to consider the possibility of requiring construction of a screening barrier to mitigate the visual impacts of the storage yard. He states there is little impact from the storage yard on surface water, and would not have an undesirable impact on the area. Mr. Gordon states Shade Enterprises picks up abandoned vehicles at the request of the local police departments.

He urges approval of the appeal, and renewal of the Use Permit to allow an automobile storage yard.

Sergeant Brown, City of Monterey, Officer Enrie Hair, Vehicle Abatement Officer for the City of Seaside, Don Stentz, Cathy Napoli, President of the Santa Clara County Auto Recycle Association, Lawrence Clark and Tony Shade address the Board in favor of granting the appeal.

Ray Siaz, Edna Lassada, Roy Blanco, and Dave Freeman, adjoining property owners, address the Board in opposition to the issuance of a Use Permit to allow this type of use on the property.

Steven Gordon, Attorney, offers rebuttal of the comments in opposition. He states no one objects to maintaining the current level of service. He states objects in the roadway and litter can be mitigated through the Use Permit process. He urges the Board to grant the appeal.

The public portion of the hearing is now closed. Carolyn Anderson, Zoning Investigator, responds to questions from Board members concerning the number of complaints received on the storage yard operation during the last 6 months, and states the complaints are higher in number than most cases.

After discussion, and upon motion of Supervisor Del Piero, seconded by Supervisor Petrovic, and unanimously carried, the Board hereby denies the appeal, thereby upholding the decision of the Planning Commission, based on the following findings:

1. Finding: That the proposed project is not consistent with the North County Area Plan.  
Evidence: The parcel is located in an area designated as "Commercial", which the North County Area Plan specifically defines as applying to "areas which are suitable for development of retail and service commercial uses, including visitor accomodation and professional office uses." The proposed use, as a storage-type facility, is consequently not consistent with the "Commercial land use designation. Further, it is also not consistent with the types of uses that the Planning Commission has approved and encourages in the "Commercial" designated areas of Prunedale.

2. **Findings:** That the project will have a significant visual impact which cannot be adequately mitigated.
- Evidence:** The parcel is highly visible from Highway 101, due to its location directly off of the highway. As well, it is easily viewed from other parcels in the vicinity, due to the topography. The visual impact of such a project is significant. Adequate mitigation of this impact is not possible. As seen from Highway 101, only partial mitigation is provided by the fence and by landscaping; passers-by are still able to see the existing operation. Also, no feasible mitigation exists for residences and businesses located higher than, and thus looking down on, the operation. To their unrestricted view, the auto impoundment yard creates an undesirable visual impact, which cannot be adequately mitigated.
3. **Finding:** That the project has an impact of undetermined significance on local ground and surface waters.
- Evidence:** At the Planning Commission hearing of January 8, 1986, public testimony indicated that oil and gas leakage related to the operation is having an impact on local ground and surface water quality. The issue, currently under review by the Health Department, has not been resolved to the extent that the project can be said to have an insignificant impact on the environment.
4. **Finding:** That the project has an undesirable impact on the commercial and residential nature of the area.
- Evidence:** The applicant operates the storage/impoundment yard in conjunction with a wrecking yard located north of the storage yard along the frontage road. Autos are transported from the storage yard to the wrecking site in order to be dismantled, crushed, or otherwise utilized in wrecking business. At the Planning Commission hearing of January 8, 1986, public testimony identified several problems related to the two operations. Parked cars and auto transport between the two businesses cause traffic congestion along the frontage road and at the intersection of Messick Road and Highway 101. Also, the operation leaves glass and other objects in the road, which is a safety hazard and has caused flat tires. Further, the unsightly appearance of the operation is a detriment to the character of the area. Each of these problems has a negative impact on both local residents and on customers of the local businesses along the frontage road.

5. Finding: That the applicant has a history of zoning violations on the previous use permit (PC-3576) for the auto storage yard.  
Evidence: Past zoning violations include storage of autos outside of the fenced area, stacking of cars above the fence, and minimal landscaping. Further, the operation continued illegally after the previous use permit expired.

After further discussion, and upon motion of Supervisor Del Piero, seconded by Supervisor Shipnuck, and unanimously carried, the Board hereby directs staff to initiate abatement actions against the storage yard at the end of 120 days.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page \_\_\_ of Minute Book 56 on April 1, 1986

Dated: April 1, 1986

ERNEST K. MORISHITA, Clerk of the Board  
of Supervisors, County of Monterey,  
State of California.

By

*Nancy Lokenhill*

Deputy

This page intentionally left blank.