CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 01-23-02 Item 3.c.

File Number
CP 01-12-105

Application Type
Conditional Use Permit

Council District
8

Planning Area
Evergreen

Assessor's Parcel Number(s)
491-02-057

PROJECT DESCRIPTION

Completed by: John W. Baty

Location: Northeast corner Tully Road and Capitol Expressway

Gross Acreage: 8.39 | Net Acreage: 8.39 | Net Density: n/a

Existing Zoning: CP - Commercial Pedestrian | Existing Use: Vacant

Proposed Zoning: No change | Proposed Use: New automobile dealership and a 4,700 square-foot restaurant

GENERAL PLAN

Completed by: JB

Land Use/Transportation Diagram Designation
Neighborhood/Community Commercial

Project Conformance:
[x] Yes [ ] No
[ ] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JB

North:	Thompson Creek/Lake Cunningham Park	A – Agricultural
East:	Thompson Creek/Lake Cunningham Park	R-1-8 – Residential
South:	Tully Road/Commercial Center	CP – Commercial Pedestrian
West:	Capitol Expressway/Vacant/Reid-Hillview Airport	IP – Industrial Park

ENVIRONMENTAL STATUS

Completed by: JB

[x] Addendum to Environmental Impact Report circulated 00/00/02
[ ] Negative Declaration circulated on
[ ] Negative Declaration adopted on

[ ] Exempt
[ ] Environmental Review Incomplete

FILE HISTORY

Completed by: JB

Annexation Title: Johnson No. 4

Date: February 3, 1962

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[ ] Approval
[x] Approval with Conditions
[ ] Denial
[ ] Uphold Director's Decision
[ ] _____

Date: _____

Approved by: _____
[X] Action
[ ] Recommendation

APPLICANT/DEVELOPER	OWNER	ENGINEER
Ray Beshoff House of Imports 6862 Manchester Boulevard Buena Park, CA 90621	Myra Reinhard 3880 South Bascom Avenue Suite 111 San José, CA 95124	Tom Armstrong, HMH, Inc. P.O. Box 611510 San Jose, CA 95161-1510

PUBLIC AGENCY COMMENTS RECEIVED Completed by: JB

Department of Public Works

See attached

Other Departments and Agencies

Fire Department

GENERAL CORRESPONDENCE

- City Council Policy for New Development in Proximity to High Pressure Gas Pipelines

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, House of Imports, is requesting a Conditional Use Permit to allow the construction of 69,095 square feet of commercial uses on 8.39 acres. The proposal includes a 64,395 square foot new car automobile dealership and a future 4,700 square foot restaurant. The project includes the sale of used cars as an incidental use, as well as vehicle-related repair and service within a fully enclosed building. The subject property has a zoning designation of CP- Commercial Pedestrian. The site is generally flat and is currently undeveloped.

The property was recently the subject of a Conditional Use Permit, CP00-09-068, which was approved on May 9, 2001 to allow a 60,273 square foot commercial/office center comprised of three buildings. The buildings had consisted of a drive-through restaurant, a sit-down restaurant and offices. The project was, however, not implemented.

A Conditional Use Permit is required in the CP-Commercial Pedestrian District for automobile dealerships. In addition a Conditional Use Permit is required in the CP Commercial Pedestrian district for individual uses that exceed 15,000 square feet.

Surrounding land uses include Thompson Creek and Lake Cunningham Park to the north and east. An approved and under construction commercial center (File No. CP98-12-060) is located across Tully Road to the south. Eastridge Mall is located to the southwest of the property across Tully Road and Capitol Expressway. Reid-Hillview Airport and other vacant parcels are located to the west across Capitol Expressway.

Project Description

The proposed 64,395 square foot automobile sales and service facility is generally proposed to be located nearest the intersection while the future 4,700 square foot restaurant would front along Capitol Expressway near the northerly property line.

The automobile dealership, to be occupied by Mercedes-Benz, is proposing a two-story showroom building that parallels, and is oriented primarily towards, Capitol Expressway. A 65 bay vehicle service building is proposed behind the sales building and will comprise the primary element along the Tully Road streetscape.

This building will also provide screened rooftop parking for new car inventory.

Parking for outdoor sales inventory of new and used cars, along with a strip of perimeter landscaping, will separate the two buildings from the street. A fenced parking area, located at the easterly end of the site will be used to store vehicles awaiting service, employee vehicles and excess new car inventory.

The site will have access from a new signalized intersection on Tully Road just east of Capitol Expressway that will be aligned with the entrance to the approved commercial center to the south. Other driveways, facilitating right-turn ingress/egress movements will be provided along the project's two street frontages.

The applicant is also proposing a small interim sale and service facility with two temporary structures located near the easterly end of the site. The structures would be removed upon completion of the proposed permanent buildings.

ENVIRONMENTAL REVIEW

The Planning Commission certified an Environmental Impact Report for the previous commercial project on April 25, 2001. The issues identified in this EIR included potential impacts to Burrowing Owls, the riparian corridor and traffic, are applicable to this project. An addendum to the adopted EIR addressed the key issues specifically related to this current proposal. The subject project has been designed to comply with all of the recommended mitigation requirements of the previous EIR. There are no new significant environmental impacts from this project.

The EIR was required because of potential impacts to Burrowing Owl habitat. The EIR concluded that impacts to Burrowing Owl nesting and foraging habitat are a significant unavoidable impact. The Commission adopted a Statement of Overriding Consideration, related to the issue of burrowing owl impacts.

<u>Burrowing Owls</u>

The Burrowing Owl report prepared for the previously approved project, by H.T. Harvey & Associates, indicated that the site represents nesting and foraging habitat for Burrowing Owls. Burrowing Owl surveys were conducted throughout the 1999 and 2000 breeding seasons. A pair of Burrowing Owls was observed on the site during the 1999 and the 2000-nesting season. The loss of this habitat and the loss of any Burrowing Owls was identified in the EIR as a significant unavoidable impact and mitigation measures were identified. These mitigation measures have been included in the current project to lessen the impact on the Burrowing Owls, but not to a less than significant level. These measures would include, a preconstruction survey and acquisition of foraging and nesting habitat.

The applicant has executed a separate agreement with the California Department of Fish & Game regarding the acquisition of habitat outside the City of San Jose. The City does not consider this sufficient mitigation to reduce the impacts to less than significant levels. If breeding owls are located on or immediately adjacent to the site, the following measures will be implemented:

1. No owls will be removed during the nesting season.

2. A 250 foot buffer area will be maintained between project activities and nesting Burrowing Owls.

3. The developer has agreed to enter into an agreement with the California Department of Fish and Game, since this project will eliminate burrowing owl habitat, to acquire and preserve 6.5 acres of existing Burrowing Owl foraging and breeding habitat management lands. While this habitat would probably not be in Santa Clara County, it would contribute to the long-term survival of Burrowing Owls regionally. However, impacts on the local population of Burrowing Owls would still be significant unavoidable as already identified in the previous EIR.

Riparian Corridor Impacts

A biotics report was prepared to assess the potential impacts to the adjacent riparian corridor. Based upon the high quality of the riparian habitat and its value to wildlife, the proposed project includes a 100-foot riparian setback. Furthermore, the project proposes to remove the existing abandoned roadway located along the eastern and northern perimeter of the project site and replant this area with native vegetation. As shown in the proposed plans, the project will provide an average 100-foot setback from the top of bank and/or the edge of the riparian corridor, whichever is greater. Staff has determined that the completed project is in conformance with the City's Riparian Corridor Policy.

The project also includes an interim plan for the temporary placement of facilities adjacent to the riparian corridor and within the riparian setback area. Although this is not consistent with the City's Riparian Corridor Policy, it is the opinion of the biologist (H.T. Harvey & Associates), and staff concur, that the temporary placement of these facilities does not constitute a potentially significant impact under CEQA given the implementation of specified conditions included in this permit. The interim sales facility is limited to one year, but is expected to be necessary for less time due to the applicant's aggressive construction schedule.

Traffic

A Transportation Impact Analysis (TIA) report was prepared by Fehr & Peers Associates, in December of 2000, to evaluate the near term traffic impacts of the previously approved project in accordance with the City's Congestion Management Program Policies and the Evergreen Development Policy. An in-house traffic analysis of the project proposal by Public Works has determined that the traffic impacts of the proposal are likely to be less than that of the previous proposal, primarily because automobile dealerships generate less peak hour trips than other commercial uses with similar sized buildings or facilities. The most significant number of traffic trips for automobile dealerships tend to occur on weekends.

The traffic report for the previous commercial project concluded that the project would have had an impact at four intersections, including Capitol Expressway/Ocala Avenue, Capitol Expressway/Capitol Avenue, White Road/Quimby Road, and Tully Road/White Road. The following mitigation measures were included in the project in order to reduce impacts to the above noted intersections to less than significant:

1. *Tully/White Road*. A second northbound left turn lane will be added at the intersection.

2. *Capitol Expressway/Tully Road.* Restriping of westbound Capitol Expressway is to be provided with two exclusive left-turn lanes, one shared left-through lane, and a separate right turn lane.

3. *Capitol/Ocala.* An additional northbound left turn lane will be provided at the intersection.

4. *White/Quimby*. A second eastbound left turn lane would be provided at the intersection.

5. *Tully Road/Project Entrance.* The project will be required to construct a new traffic signal at the access driveway on Tully Road.

6. *Tully Road/Glen Angus Way* The proposed project will also contribute its fair share of the cost of a new traffic signal at the intersection of Tully Road and Glen Angus Way.

This project will be conditioned to provide the above noted mitigation measures as required of the previously approved project. However, the applicant will be permitted to prepare a project specific traffic report, for the review and acceptance by the Director of Public Works prior to the issuance of a Public Works clearance, to assess whether the identified mitigation measures are required for this project to achieve compliance with the Evergreen Development Policy. In the event that the Director of Public Works concludes that some of the mitigation measures are no longer necessary to satisfy the City traffic policy objectives, the developer will be allowed to delete appropriate mitigation requirements as deemed appropriate. This sequence does not constitute a CEQA issue as the impacts of the prior project represent a worst case relative to the proposed project.

Noise

The proposed project has no direct residential interface. The nearest residential is located approximately 300 feet southeasterly of the site across Tully Road. The project is required to meet the noise standards of the General Plan and includes the standard conditions for the potential noise generated by auto sales and service.

GENERAL PLAN CONFORMANCE

The proposed commercial uses are consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This site was the subject of a General Plan Amendment in 1998, which changed the designation from Combined Industrial/Commercial to the present designation.

ANALYSIS

The key issues analyzed for the proposed project include: 1) site design & conformance to the Commercial Design Guidelines, 2) Architecture, and 3) consistency with the Policy for Development of Land in Proximity to High Pressure Natural Gas Pipelines.

Site Design and Conformance to the Commercial Design Guidelines

The proposed project complies with the technical development policies of the Commercial Design Guidelines for new automobile dealerships with respect to setbacks, site organization, building design, screening of service yards, and landscaping.

The project site has moderate access constraints in that driveways along Capitol Expressway, which are not under the jurisdiction of the City, are limited to right-turn ingress/egress only. The project will share a future signalized intersection with the adjacent planned commercial center on the south side of Tully Road. The location of this previously planned intersection is required to be a moderately substantial distance from the intersection of Capitol and Tully in order to avoid conflicts between the two intersections. Although the new

intersection was ideal for the previously approved commercial uses, this intersection will serve in more subordinate manner compared to other driveways for the automobile dealership project. This is a result of its location near the rear service yard and relative distance from the sales building facing Capitol Expressway.

Perimeter Landscaping. In February 2001, the site's zoning designation was changed from C-1 Commercial to CP-Commercial Pedestrian. As a result the previous 25-foot setback requirement was eliminated. The CP-Commerical Pedestrian district is intended to support pedestrian oriented retail activity at a scale compatible with surrounding residential neighborhoods. The development standards of the district require no minimum front setback, with a 10 feet maximum. The zoning designation does, however, include provisions for the City to require a more significant setback and landscaping where the development pattern of the neighborhood warrants such treatment. The applicant is proposing building setbacks of about 100 feet from both street frontages. A small landscape strip of 10-15 feet for the auto dealership and 20 feet for the restaurant site are proposed along Capitol Expressway. A 15-foot perimeter landscape area is proposed adjacent to Tully Road.

Unlike existing developed "auto rows" of Stevens Creek Boulevard and Capitol Expressway Auto Mall, the previously approved commercial project provided a 25-foot (or more) setback and/or landscaping strip along the front edge of both street frontages. This was consistent with the commercial project recently approved on the south side of the Tully Road and at Eastridge. Although, the smaller setbacks of the CP-Commercial Pedestrian Zoning designation were intended to promote a more intimate, pedestrian friendly character, the predominant amount of similarly zoned properties tend to be located on less significant streets with slower traffic speeds, and where such a preferred pedestrian environment is either existing or attainable. For this reason, and given the scale of Capitol Expressway, the high speed of traffic and existing development pattern, staff feels that a 25-foot landscape strip along Capitol Expressway is more appropriate. In this regard, a condition has been included in the permit. The applicant does not agree with this condition.

An equally important streetscape consideration is the planting of appropriate street trees along the Capitol Expressway and Tully Road frontage. The project landscape plans indicate an attached sidewalk (no park strip) with the street trees planted behind the walk. Magnolias are the proposed street trees for Capitol Expressway and Sycamores for Tully Road. Staff strongly recommends that Sycamores be planted exclusively because Magnolias are not appropriate for this application due to root impacts, etc. Condition No. 36 of the permit includes a condition for revisions to the landscape plan.

Building Setbacks. The Commercial Design Guidelines (CDGs) recommend that buildings be placed to help "anchor" sites near the intersection. Such buildings help define an intersection and break-up large expanses of parking areas. Such an urban design pattern is generally contrary to traditional automobile dealership site designs due to the need for prominent displays of new car inventory. Staff is not advocating placement of a building near the corner or in closer proximity to the street edge. There are opportunities to modify the current project slightly in order to better achieve the site design intent of the CDGs with regard to anchoring the corner, while also respecting the dealership's desire for maintaining high visibility of the new cars.

Under the current proposal, the project proposes an enhanced paved area in the area directly between the showroom building and the street intersection. Staff contends that this special display area, as currently configured, should be placed on a elevated platform 1 to 2 feet above the surrounding outdoor sales area on either side. Additionally, a substantial trellis, semi-shaded canopy or similar architectural element could be constructed above this area to more substantially add prominence and visibility to the vehicles chosen for display on this area. Such a feature would provide an anchoring building element to "bridge the gap" from the street corner to the showroom building that is setback about 100+ feet from the streets. The applicant has revised the plan to include four small trellis elements, but these are really too small and separate from the main

building to function as good, alternative extensions of the building mass. An architectural design with a more *significant* trellis or canopy element would not affect the current site layout, or necessarily need to be physically attached to the showroom building. If properly designed, such a design feature would have the additional benefit of breaking up the large expanse of asphalt parking/outdoor display area. A condition has been added to the project to require the subsequent inclusion of such a design element into the project prior to the issuance of building permits for the showroom building.

Site Design for Proposed Restaurant. The project includes the identification of a 4,700 square foot "sit-down" restaurant site along the Capitol Expressway near the northerly property line. This was a key commercial component to the previous approved development and represents a use that has long been identified by the community as a needed use in the Evergreen Area. The proposed structure will not be constructed until such time that a specific tenant has been secured for this use. An architectural concept has not yet been developed for this building. Condition No. 34 restricts the use of this pad to a sit-down restaurant only.

Staff is recommending minor changes to the restaurant site design to help establish a separate identity from the automobile dealership. Staff is recommending that a permit adjustment be filed to finalize the building design and site layout. The future building should be moved closer to the street and should accommodate a site design with just one double-loaded parking aisle separating the building from the street. The configuration of the building should be modified, or turned 90 degrees, so that the balance of the required parking is provided between the building and the northerly property line. The proposed restaurant should share a common driveway with the dealership as proposed, however, the intermingling of new car inventory display with restaurant parking is not appropriate.

Vehicle Service Facility. Service activities will occur within the completely enclosed service building with access points oriented such that they are not visible from Capitol Expressway or Tully Road. The ramp that provides access to roof-top parking on the service building will be designed such that it is not visible from Tully Road. Architecturally compatible walls and fences will be located along Tully to screen vehicles being stored for service.

Interim Temporary Facility. The applicant is proposing two modular structures for temporary use as a sales center and a service/detailing facility. These buildings would be used while the permanent facility is under construction. The structures are proposed near the easterly side of the site within the riparian corridor setback area. This riparian setback is currently paved with an existing access road. Although not in compliance with the City's Riparian Corridor Policy staff has reviewed a supplemental biotic report that indicates that a temporary facility would not result in any new environmental impacts. Staff has conditioned this permit to allow the temporary facility in the proposed location for one year, provided that the conditions specified in the biotic report are implemented. Additional design information regarding the interim facilities will be submitted as a Permit Adjustment to ensure an attractive building and interim site design.

<u>Architecture</u>

The proposed showroom building exhibits an attractive design facing the street. The proposed plans are generally representative of "conceptual" architecture in terms of the level of detail. The plans, however, do not include appropriate "permit-level" detail to provide sufficient information to assess the quality of materials, building articulation and finer detail elements of the design.

The vehicle service building provides the added benefit of discretely screening roof-top storage of new cars. The façade facing the street maintains a degree of commonality of design elements with the showroom

building, but as with the showroom building, the overall comprehensiveness of the plans is not sufficient for consideration of approval. Upon review of more comprehensive plans, it may be confirmed that the building elevation facing the street should maintain a better level of detailing to soften its somewhat "industrial" appearance. This permit includes conditions for the applicant to secure a Permit Adjustment to address the deficiency of design detail information on the plans, and better address quality and improvements of the street elevation of the service building. This condition also extends to the provision of other miscellaneous details of the project including landscape design, lighting and adequate descriptions for smaller project elements such as, but not limited to gates, bollards and fences.

Conformance with the City's Guidelines for Land in Proximity to High Pressure Natural Gas Pipelines

A high-pressure gas pipeline bisects the site in the area of the proposed parking lot. The proposed project complies with all of the requirements of the City's Guidelines for development of land in proximity to high pressure natural gas pipelines (see attached) to minimize exposure to potential hazards. The policy requires that only buildings having a "low-density occupancy load" should be allowed within 250 feet of the edge of a pipeline right-of-way. The definition for "low-density occupancy load" buildings includes retail stores that are not part of a shopping mall. Additionally, no building of more than two stories should be allowed within 250 feet of the edge of the pipeline with no portion being any closer than 15 feet from the pipeline right-of-way. The proposed project conforms to this policy.

Summary

Automobile dealerships represent a significant benefit to the fiscal health of the City from a sales tax revenue standpoint. Such projects, when well designed, are therefore worthy of expeditious processing to a reasonable extent. The proposed project respects the environmental considerations approved with the previous development. While the project has a few design aspects that need to be subsequently addressed, the fundamental land use compatibility issues have been adequately addressed. Staff has a high degree of confidence that the outstanding design issues, upon approval of this permit with the conditions noted, can be successfully addressed through the Permit Adjustment process.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site.

RECOMMENDATION

The Planning staff recommends approval of the requested Conditional Use Permit and that the Planning Commission approve a resolution with the findings and conditions stated below:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

2. The project site is located in the CP-Commercial Pedestrian Zoning District.

3. The proposed commercial project consists of 69,095 square feet of building area comprised of three

buildings; a 64,395 square foot automobile dealership (showroom/office building and service building), and a future 4,700 square foot free-standing restaurant building.

4. The project proposes 145 parking spaces that exceed minimum Zoning Ordinance parking requirements for automobile dealerships and restaurants.

5. The proposed project is adjacent to Thompson Creek and proposes to meet the minimum required riparian setback defined in the Environmental Impact Report (EIR).

6. A high-pressure gas pipeline bisects the proposed project site.

7. Only low occupancy buildings are proposed near the pipeline and are setback greater than 15 feet.

8. An Environmental Impact Report has been adopted for the previously approved project which indicates that certain mitigation measures will be incorporated to prevent the occurrence of any significant adverse effect on the environment. The current proposal will incorporate the same mitigation measures defined in the EIR in addition to any additional mitigation required by the Addendum to the EIR.

9. This project will contribute toward the construction of a landscaped median island across the project street frontage. Contribution of future island construction will be as determined by the Director of Public Works.

10. The developer is proposing that the restaurant be a “sit-down” restaurant only.

11. Title 20 (Zoning Code) of the San Jose Municipal Code provides that the Planning Commission may issue a development permit subject to such conditions reasonably necessary to secure the purposes of the Zoning Code, including limitations on use.

12. The project includes conditions that will ensure that the 4,700 building pad provide a quality sit-down restaurant.

13. The Commercial Design Guidelines recommend that buildings be placed near the intersection of existing street to anchor the corner.

14. The project, as conditioned, would provide a trellis or similar building element located substantially closer than the building currently shown on the proposed plans.

15. The proposed auto dealership will be primarily oriented to Capitol Expressway, an eight-lane, 140-foot-wide major thoroughfare without sidewalks.

16. The proposed dealership will provide an outdoor display of new vehicle inventory as close as 10 feet from the edge of the Capitol Expressway right-of-way.

17. The adjacent commercial development has an approved perimeter landscape area of 25 feet in width.

18. The Zoning Ordinance provides the City the discretion to increase the front perimeter setback for parcels in the CP-Commercial Pedestrian District provided findings can be made which would justify such increases in order to maintain a consistent pattern of development.

19. The project includes conditions to increase the perimeter landscaping adjacent to the right-of-way to 25 feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The project complies with the City's Riparian Corridor Policy.

4. The project complies with the City's Policy for Development within Proximity of High Pressure Gas Pipelines.

5. The proposed project is in compliance with the California Environmental Quality Act.

6. The proposed project, as conditioned, is in compliance with the intent of the City's Commercial Design Guidelines.

7. The requirements for contribution toward the construction of a landscaped median island is required based on the following:

    a. The purpose of this in-lieu fee for landscaping is to promote the goals and policies of the General Plan of creating a positive community image by developing a network of landscaped thoroughfares, and to promote traffic safety by providing appropriate separation of traffic and control turning movements.

    b. The fee will be used to construct median islands, landscaping, irrigation, and necessary improvements to control and facilitate turning movements within the public right-of-way.

    c. There is a reasonable relationship between use of the fee and the type of development project upon which the fee is imposed in that the subject project will be viewed by substantial numbers of the traveling public since it is located on a non-residential street carrying high volumes of traffic or will by its nature attract high volumes of traffic.

    d. There is a reasonable relationship between the need for the landscaped median island and the type of development project upon which the fee is imposed in that the subject project and median island are located on a major thoroughfare street carrying high volumes of traffic and will, therefore, be viewed by substantial numbers of traveling public, and restrictions of turning movements and channelization of vehicular traffic on the thoroughfare is required for traffic safety as a result of the project.

    e. There is a reasonable relationship between the amount of the fee imposed upon the project and the cost of landscaped median islands in that the fee imposed on the project is estimated to equal 100 percent the cost of modifying landscaped median island across the project frontage to the satisfaction of the Director of Public Works.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning

Commission finds that:

1. The proposed use at the location requested will not

    a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

    b. Impair the utility or value of property of other persons located in the vicinity of the site; or

    c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:

    a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

    b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, <u>notarized</u>, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions

throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Tully Road/Capitol Expressway Commercial Site by Beshoff Motors," dated December 12, 2001, last revised on January 15, 2002, in addition to required permit adjustments, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).

3. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Minor interior or landscaping work which does not generate any audible noise off-site may be permitted on weekends between 8:00 a.m. and 7:00 p.m.

5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

7. **Lighting.** Outdoor lighting on the site shall conform to the City's Outdoor Lighting Policy. Low-pressure sodium (LPS) lighting fixtures shall be installed in all areas that are not used for display of for sale vehicles. High-intensity, non-LPS outdoor lighting may be used in vehicle display areas and shall be dimmed no later than 10:00 P.M. each night. Lighting shall conform to the City's Outdoor Lighting Policy. Electroliers shall not exceed 25 feet above grade. Lighting near the riparian setback area shall be low level in accordance with the City's Riparian Corridor Policy. A comprehensive lighting plan shall be submitted as a permit adjustment for approval by the Director of Planning.

8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an

orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.

9. **Roof Equipment.** All roof equipment shall be screened from view.

10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.

11. **Sign Design.** Proposed signs shall be subject to approval by the Director of Planning.

12. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.

13. **Street Trees.** Street trees as shown on approved plans shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373. Sycamores shall be used as the street tree for Capitol Expressway and Tully Road.

14. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.

15. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-14952) to the satisfaction of the Director of Public Works:

    a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.

    b. *Sanitary Sewer.* The developer shall make all improvements necessary to the existing sanitary sewer system to accommodate the proposed development.

    b. *Soils Report.* A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City's Engineering Geologist prior to the issuance of a Public Works Clearance or a Grading Permit.

    c. *Landscaped Median Island.* Applicant will be required to contribute toward the modifications of a landscaped median island across the project frontage on Tully Road. Contribution will equal 100 percent of the cost of median island modifications as determined by the Director of Public Works.

    d. *Landscape Irrigation Equipment.* Pursuant to San José Municipal Code, Section 15.10.478, landscape irrigation equipment shall be installed to the satisfaction of the Director of Public Works.

    e. *Storm Water Management.* This project results in a land disturbance of more than five acres. Prior to the commencement of any clearing, grading or excavation, the project shall comply

with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:

(1) The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.

(2) The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

- Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in ABAG's *Manual for Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities.

- Prior to the issuance of a grading permit, the applicant shall submit copies of the SWPPP, NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

f. *Reclaimed Water Irrigation Systems.* Pursuant to San José Municipal Code, Section 15.10.480, irrigation systems for all landscaped areas in excess of 10,000 square feet, unless specifically exempted by the Director of Planning, shall be designed and installed to allow the current and future use of reclaimed water to the satisfaction of the Director of Public Works.

g. *Inlet Filters.* The project developer shall install inlet filters in all on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:

- <u>Installation.</u> The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintenance by the project developer and subsequent property owner.

- <u>Maintenance Record.</u> The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.

- <u>Regular Sweeping.</u> Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.

- <u>Regular Inspections.</u> The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning property.
- <u>Replacement of Absorbent Material.</u> The absorbent material shall be replaced by a qualified

individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.

- Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.

- Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.

h. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

i. *Swales.* The project developer shall install vegetative swales as shown on the approved Conditional Use Permit Plans.

- Maintenance. The swales shall be maintained on a regular basis by a qualified individual to ensure that the swales are functioning properly.

- Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the swales.

- The drainage swales shall not be concrete. Such swales shall be constructed of porous material such as cobbles, soil, groundcover, etc.

j. *Grading and Drainage Plan.* A Grading and Drainage Plan, indicating existing and finished elevations, is to be submitted for review to the City Hydraulic Engineer.

k. *Driveways, Sidewalks, Curbs.* Applicant shall, at no cost to the City, construct driveway(s), close unused driveway(s), repair broken sidewalk(s), repair broken curbs and gutters, and/or repair street pavement.

l. *Electroliers.* Applicant shall, at no cost to the City, install or relocate electrolier(s).

m. *Flood Elevation Certificate.* The applicant shall provide a Flood Elevation Certificate.

n. *Burrowing Owls.* Prior to the issuance of a grading permit, the developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any Grading or Building Permits, the developer shall submit a biologist's report to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

o. *Traffic Signal/Intersection Improvements.* The developer shall install a new traffic signal on Tully Road adjacent to the project entrance and any related median island, re-stripping and pavement reconstruction.

p. *Encroachment Permits.* The developer shall obtain any and all encroachment permits from the County of Santa Clara for project access onto Capitol Expressway.

The conditions of public improvements shall require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes private engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

16. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

a) *Permit Adjustment.* Improvements as identified in condition #45- "Permit Adjustment Required" shall be incorporated into the final building design.

b) *Construction Plans.* This permit file number, CP01-12-105, shall be printed on all construction plans submitted to the Building Division.

c) *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

d) *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).

e) *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line or riparian corridor unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line or riparian setback line.

f) *Burrowing Owls.* The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any Grading or Building Permits, the developer shall submit a biologist's report to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

g) *Archaeology***.** There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.

(1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.

(2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).

(3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:

(a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendance of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

(b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

17. **Fire Hydrants and Driveways.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.

18. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.

19. **Fire Flow.** Required fire flow for the site is 4,500 gpm, or as otherwise approved in writing by the Fire Chief.

20. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.

21. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.

22. **Hazardous Materials Storage.** This permit does not include approval of any facilities or areas on, within, or under the site to be used for the storage of hazardous, toxic, flammable, or combustible materials, and such facilities or areas are subject to review under separate Site Development/Planned Development Permit.

23. **Loading Hours.** All loading operations shall be limited to the hours between dawn and dusk.

24. **Alcohol Sales.** This permit does not include approval for the off-sale of alcoholic beverages.

25. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside.

26. **Riparian Mitigation**. The developer shall comply with the recommendations in the biotics report prepared for the project by H.T. Harvey & Associates dated September 7, 2000 and subsequent report dated January 16, 2002 to the satisfaction of the Director of Planning.

27. **Burrowing Owls.** The developer shall comply with the recommendations in the biotics report prepared for the project by H.T. Harvey & Associates dated September 7, 2000 to the satisfaction of the Director of Planning. This shall include, the developer has entering into an agreement with the California Department of Fish and Game, to acquire and preserve 6.5 acres of existing Burrowing Owl foraging and breeding habitat management lands.

28. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

29. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

30. **Addressing.** Address numbers shall be illuminated during the hours of darkness and positioned so as to be readily readable from the street. Numbers that are a minimum of 12 inches are recommended.

31. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.

32. **Interim Sales and Service Facilities.** The following conditions shall be implemented to the

satisfaction of the Director of Planning.

a) Structures are to remain within the riparian setback for no longer than one (1) calendar year from the date of issuance of this Conditional Use Permit.

b) All lighting is to be directed away from the riparian corridor.

c) No untreated water can enter into the riparian corridor.

d) The use of aerosols in the temporary detail area will be very limited, and no exhaust fans will be directed toward the riparian corridor.

e) Vegetation (container plants) will be used to help screen the temporary buildings from the riparian corridor.

33. **Restaurant Area Interim Use.** The area designated for restaurant use shall be graded and paved for inventory display by the automobile dealership until such time that a tenant for the restaurant is secured or 90-days from the completion of the permanent Sales Building, whichever comes first.

34. **Sit-Down Restaurant**. The restaurant shall only be used for a sit-down restaurant, to the satisfaction of the Director of Planning.

35. **Restaurant Hours.** The sit down restaurant may operate 24-hours a day or past midnight. All other uses shall be restricted to operation between 6:00 a.m. and 12:00 midnight.

36. **Automobile Sales.** Only new automobile sales with incidental used automobile sales shall be allowed. The sale of used automobiles as the primary use shall require a Conditional Use Permit.

37. **Test Drives.** Test drives of vehicles shall not be conducted in residential neighborhoods near the subject site.

38. **Off-Site Loading/Unloading and Vehicle Storage Prohibited.** All loading and unloading of vehicles, parts, equipment, and other delivered goods shall take place on-site. No loading, unloading, staging or parking/storage of vehicles associated with the project shall take place in the public right-of-way.

39. **Restrictions.** The following functions and activities are prohibited on any portion of this property, and within any building approved under this permit.

a) Dismantling of new and used vehicles for purposes of parts salvage.

b) Service and/or repair activities in the outdoor areas of the project site.

c) Automotive body work and painting.

d) Outdoor storage of stock, equipment, materials, and refuse unless otherwise shown on the approved plan set.

e) Public address systems of any type.

40. **Employee Education of Operational Hours and Restrictions.** The applicant shall, on an ongoing

basis, educate all employees of the above stated restrictions on test drives, site ingress/egress, loading/unloading activities, and service activities, and shall post rules and regulations in a readily visible location.

41. **Security Gates.** Security gates shall remain closed and locked after business hours. Security gates shall be capable of being opened by a master key, or via remote triggering by touch tone telephone, for emergency access to the satisfaction of the Police and Fire Department.

42. **Contact Person in Case of Disturbance.** The applicant shall permanently display, at a readily visible location, a contact name and phone number to report nuisance activities and noise disturbances during hours of construction, in contrasting letters one inch in height.

43. **Noise Mitigation.** Construction of all structures approved by this permit shall include implementation of the noise mitigation measures identified in the noise section of the Evergreen Commons North EIR, as certified by the Planning Commission on April 25, 2001, as required by the Director of Planning. Operational noise shall meet the City's General Plan noise standards.

44. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

45. **Adjustment Required.** The developer shall secure and agree to implement a Permit Adjustment that addresses the following project design issues to the satisfaction of the Director of Planning:

    a) *Perimeter Landscaping*. Perimeter landscaping along Capitol Expressway should be increased to a minimum width of 25 feet.

    b) *Vehicle Display Canopy.* A raised vehicle display area shall be provided between the showroom building and the street intersection. Additionally a substantial overhead trellis or canopy element shall be provided that is architecturally compatible with the architecture of the showroom building.

    c) *Service building elevation*. A more enhanced and articulated building elevation facing Tully Road for the service facility shall be provided.

    d) *Comprehensive plans for project details*. Plans shall be submitted for the approval of all-exterior building elevations and information for all site detail accoutrements for the project.

    e) *Restaurant building site.* The restaurant building shall be reoriented or designed so that it will be closer to the street and accommodate a site design with just one double-loaded parking aisle separating the building from the street.

    f) *Interim sales/service facility*. A comprehensive plan set shall be provided which addresses all aspects of the site design and architectural details for the facility. A separate Permit Adjustment can be filed for the interim sales/service facility and does not affect the subsequent issuance of Building Permits.

g) *Comprehensive lighting plan*. A comprehensive lighting plan shall be provided.

h) *Landscape Plan revisions.* The landscape plan shall be revised to delete Magnolia as the designated street tree for the Capitol Expressway frontage, and replaced with Sycamore. The proposed planting for the riparian setback shall be revised, as necessary, to the satisfaction of a qualified biologist and the Director of Planning.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

   a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

   b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

   c. The use as presently conducted creates a nuisance.

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