

BEFORE THE CITY COUNCIL
CITY OF SUMAS, WASHINGTON

IN RE Conditional Use Permit, Shoreline)	REPORT OF DECISION
Substantial Development Permit (SH 23-)	
01), and Zoning Setback Variance)	
Applications of:)	
)	
Mazdak International Inc)	Adopted on June 26, 2023
Baha Abulnaga)	
PO Box 117)	
Sumas, WA 98295)	

The matter having come before the City Council of the City of Sumas for public hearing on June 26, 2023, the Council having duly considered all matters in the record and all testimony given for and against the application, makes the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

1. The Applicant is Baha Abulnaga of Mazdak International Inc. The Applicant’s mailing address is PO Box 117, Sumas, WA 98295.
2. The Applicant is proposing to develop two warehouses on a property which is adjacent to Mazdak International Inc.’s current location at 410 W. Third St. The applicant is also proposing to relocate an existing foundry, located at the adjacent property, to the new site.
3. The Project also includes the filling of an approximately 5,315 square foot Category IV wetland, along with compensatory mitigation at an off-site location.
4. The site address is 411 W. Second St. It is situated in the NW ¼ of the SE ¼ of Section 34, Township 41 North, Range 04 East of W.M. and is identified under Whatcom County Assessor’s tax parcel number 410434 403195.
5. The Project site’s zoning designation is Industrial, which is consistent with the site’s designation within the *City of Sumas Comprehensive Plan*. Therefore, the Site is subject to the zoning regulations established in Chapter 20.44 of the Sumas Municipal Code (SMC).
6. Some aspects of the Project are identified as being allowed as a permitted use in the Industrial District under Section 20.44.020(1), (3) and (13) SMC – “Warehousing,” “Light manufacturing” and “Machine shops”.
7. The proposed warehouses are set to be built 35 feet from the City Right-Of-Way. The front yard setback requirement, as shown in Section 20.44.050(a) SMC, is to “be not less

than forty-five feet as measured from the foundation line of any principal or accessory structure”. This would require approval of a zoning variance, pursuant to Chapter 20.64 SMC.

8. The Applicant intends to relocate the existing foundry, located on the existing property, to the new site. The Applicant received a Conditional Use Permit (CUP) when the foundry was originally built. Because the applicant wishes to transfer the foundry from one property to another, the CUP that the Applicant originally obtained will not transfer with it. Therefore, the Applicant is also applying for a new CUP for the foundry, pursuant to Chapter 20.66 SMC.
9. The Project site plans show the approximate locations of the proposed facilities and improvements to be constructed as part of the Project.
10. The Project includes the filling of a 5,315 square foot wetland in the 100-year floodplain that is within the jurisdictional area of the City’s Shoreline Master Program. Therefore, in addition to requiring approval of a zoning variance, the Project also requires approval of a shoreline substantial development permit.

Procedural Requirements

15. On April 10, 2023, the Applicant submitted multiple applications related to the Project. The submission included the following:
 - a) JARPA application;
 - b) Various site plan drawings;
 - c) SEPA Environmental Checklist;
 - d) Zoning Variance application.
16. On April 25, 2023, the Applicant also submitted a Conditional Use Permit (CUP) Application for the project.
17. The application was processed as a Class III action pursuant to the provisions of Chapter 20.08 SMC. A *Notice of Completeness* was issued by the City on May 2, 2019; therefore, the Project applications are considered vested to the regulations in place on the date the applications were received. A *Notice of Application* was issued by the City on May 10, 2023. A public comment period was open from May 10 through June 9, 2023. No comments were received during the public comment period.
18. On June 13, 2023, the City, acting as lead agency under RCW 43.21C, the State Environmental Policy Act (SEPA), issued a Mitigated Determination of Nonsignificance (MDNS) with respect to the Project. A 14-day SEPA comment period was open from June 13 through June 26, 2023.
19. One comment from the Washington Department of Ecology was received during the SEPA comment period.

20. Condition 2 from Appendix A ensures that the mitigating conditions set forth in the MDNS are included as conditions of approval in relation to the Project.
21. In accordance with state law and City ordinance, notice of the public hearing before the City Council regarding the Project was given to neighboring property owners and to the public on May 10, 2023.
22. A duly advertised public hearing before the Sumas City Council was opened on June 26, 2023 where opportunity for public comment was provided and public testimony was received.

Zoning Requirements

23. The Project is an enumerated conditional use under Subsection 20.44.030(1)(H) SMC because it involves the forging or smelting of metals.
24. As proposed in the Application, the Project meets the standards of the Industrial District set forth in the following sections of the Sumas Municipal Code:
 - Section 20.44.090 Signs.
25. As proposed in the Application, the Project does not meet the standards of the Industrial District set forth in the following sections of the Sumas Municipal Code:
 - Section 20.44.050 Yard Requirements.
26. The Applicant has applied for a Zoning Variance as a result of the Project not being able to meet the Yard Requirements section of the Industrial District Chapter of the Sumas Municipal Code.
27. Section 20.44.070 SMC establishes that the maximum lot coverage requirement within the Industrial District is 60 percent. According to the application materials, the completed Project will include 11,520 sq ft of lot coverage by structures. Based on the overall parcel size of 23,520 sq ft, the Project's lot coverage will be approximately 49 percent, which is in conformance with the lot coverage requirement.
28. Section 20.44.080 SMC establishes that the minimum open space requirement within the Industrial District is 15 percent. According to the application materials, the completed Project will include 11,520 sq ft of impervious surfaces, which equates to approximately 49 percent of the total parcel area [$11,520 / 23,520 = 0.49$]. Therefore, the completed Project will include approximately 51 percent open space, which is in conformance with the open space requirement. Condition 4 from Appendix A ensures that the open space requirement will be met.

General Conditional Use Permit Criteria

29. As stated above, the Project is an enumerated conditional use under Subsection 20.44.030(1)(H) SMC because it involves the forging or smelting of metals. Section 20.66.020 SMC establishes the general conditional use permit criteria as follows:

“Before approving a conditional use permit, the city council shall find that the applicable standards of the use district are met by the proposal and shall also find that the proposed conditional use at the location specified in the application will:

- (1) Be harmonious and in accordance with the general policies and specific objectives of the city comprehensive plan;
- (2) Be designed to be compatible with the essential character of the neighborhood and not be hazardous or disturbing to persons, property or existing neighboring uses;
- (3) Be adequately served by public facilities and utilities including drainage facilities;
- (4) Not create excessive vehicular congestion on neighborhood collector or residential access streets;
- (5) Not create conditions substantially detrimental to persons, property or neighboring uses by reason of the production of excessive amounts of traffic, noise, smoke, fumes, glare, electrical interference, mechanical vibration or odor;
- (6) Not result in the destruction, loss, or damage to any natural, scenic, or historic feature of major consequence.”

30. With the conditions of approval set forth in Appendix A, the Project meets the applicable criteria for issuance of a conditional use permit at Section 20.66.020 SMC as follows:

(1) The Project is harmonious and in accordance with the general policies and specific objectives of the Sumas Comprehensive Plan and is included under the conditional uses allowed in the Industrial District as set forth in Section 20.44.030(1) SMC. The Applicant has indicated that the development is consistent with the comprehensive plan policies and the purpose set forth for the Industrial District. Map 5 from the Sumas comprehensive plan (2016) shows that the Site is bordered on the west and bordered in part on the east by areas

(2) The Project has been designed to be compatible with the essential character of the neighborhood and not be hazardous or disturbing to persons, property, or existing neighboring uses. The Applicant has stated that the Project has been designed to be compatible with the surrounding Industrial District and neighboring uses and will be similar in appearance to other industrial operations in the District. Based on the mitigating conditions in the MDNS, the Project will comply with all state and federal requirements related to air emissions and be in conformance with applicable air quality standards. A mitigation plan has been submitted that addresses off-site mitigation for impacts to on-site wetlands proposed to be filled.

(4) The neighborhood that the Project is located in is already developed and have city utilities already in place. The Sumas Public Works Director has determined that the proposed Project will not substantially impact the City’s drainage system.

(3) The Project will not create excessive vehicular congestion on neighborhood, collector or residential access streets because it will be accessed from W Second St, which is located in a neighborhood that is accessed only by either Bob Mitchell Ave, a heavy haul road, or W Third St, which is also an access point for the other industrial uses in the neighborhood.

(5) The Project will not create conditions substantially detrimental to persons, property, or neighboring uses by reason of the production of excessive amounts of traffic, noise, fumes, glare, electrical interference, mechanical vibration, or odor. Traffic impacts will be minimal based on the anticipated amount of truck traffic

generated. The Project must comply with noise standards established in Chapter 8.26 SMC. It is not anticipated that the Project will generate significant amounts of glare or electrical interference.

(6) The Project will not result in destruction, loss, or damage to any natural, scenic, or historic feature of major consequence. There are no specific scenic features of importance on the site. The Applicant has proposed compensatory mitigation to offset impacts to on-site wetlands that will be filled. The Project is located outside the zone of contribution for the City's wellfields. No adverse comments have been received by the City regarding scenic or historic features.

Industrial District Conditional Use Permit Criteria

31. Section 20.44.035 SMC establishes zone-specific conditional use permit criteria to be considered by the City Council when reviewing proposed conditional uses in the Industrial District. These criteria are as follows:
- (1) The extent to which the proposed use is consistent with the purpose established under Section 20.44.010;
 - (2) The benefits to the public that will result from permanent improvements associated with the proposed use that increase the city's tax base;
 - (3) The number, duration and quality of jobs that will result from establishment of the proposed use;
 - (4) The extent to which potential impacts to the public and neighboring properties and resources, including to neighboring zoning districts, will be mitigated to within acceptable levels such that the use will not result in adverse impacts to private property, property values, quality of life, and community and environmental health; and
 - (5) The extent to which the use will generate benefits or contribute revenue that will offset impacts to or use of public facilities.
32. Based on a review of the Application and the supplemental information provided by the Applicant, the Council finds that the Project is consistent with the supplemental conditional use permit criteria set forth in Section 20.44.035 SMC as follows:
1. Section 20.44.010 SMC establishes that the purpose of the Industrial District is "to encourage the development of manufacturing, wholesale and selected retail business establishments." The Project will develop a manufacturing facility and support increased business activity in the City.
 2. The proposed improvements will add to the City's tax base and increase business activity in the City.
 3. The Project is estimated to add ten new skilled jobs. These will be permanent jobs that will be in addition to the employment opportunities available during construction of the facility.
 4. The Applicant has stated that the Project has been designed to be similar to and compatible with other uses in the Industrial District. The Applicant has also stated that the Project has been designed to avoid or mitigate all potential adverse impacts to neighboring properties and uses, property values, quality of life, the community and the environment. With the conditions of approval set forth in Appendix A, the Project

- will mitigate potential impacts to the public and neighboring properties and resources, including to neighboring zoning districts, to within acceptable levels.
5. The Project will increase the City's tax base and utility revenues. These benefits will support maintenance of the City's utility and transportation infrastructure.

Shoreline Substantial Development Permit Requirements

33. The Project Site is within the jurisdictional area of the City's Shoreline Management Master Program (SMP) as said jurisdictional area is defined under Section 15.04.060 SMC, which establishes that SMP jurisdiction shall include wetlands located within the 100-year floodplain. As shown on the applicable flood insurance rate map prepared by the Federal Emergency Management Agency (FEMA), the Site and the wetland within the Site are located within an Area of Special Flood Hazard, also referred to as the 100-year floodplain. All developments within SMP jurisdiction must be consistent with the goals and policies set forth in the Shoreline Management Element of the City's comprehensive plan and with the regulations established under Chapter 15.04 SMC.
34. The Project requires approval of a shoreline substantial development permit. To approve a substantial development permit, the City must find that the proposal meets the criteria for a substantial development permit established under SMC 15.04.170, including requiring consistency with the policy set forth in the state Shoreline Management Act (RCW 90.58) and with the goals, policies and regulations set forth in the City's SMP.
35. The City's Official Shoreline Map establishes the locations of the various shoreline environment designations (which are akin to shoreline zoning). The wetland proposed to be filled as part of the Project had not been specifically identified and mapped at the time the Official Shoreline Map was developed and adopted; however, the Official Shoreline Map and Section 15.04.230 SMC establish that unmapped wetlands that are within shoreline jurisdiction shall be included in the Urban Conservancy-Wetland environment.
36. The City SMP further divides jurisdictional wetlands into two categories: Urban-2 and Conservancy. While all wetlands are subject to protection under the City's SMP, Conservancy wetlands are generally prohibited from being filled.
37. Based on the small size of the wetland (5,315 square feet), the low wetland rating (Category IV) and the low habitat score for the wetland, City staff have determined that the subject wetland is an Urban-2 wetland and, therefore, filling of the wetland is not prohibited under the SMP. Under the SMP, any such filling of a wetland must provide compensatory mitigation for lost functions.
38. Section 15.04.420 SMC establishes the permitted uses in the Urban Conservancy-Wetland environment. These include Industrial Development under subsection (B) and associated Landfill and Excavation under subsection (C). The Project is a permitted use within this shoreline environment.
39. The use regulations applicable to Industrial Development are set forth under Section 15.04.530(D) SMC.

40. The Project has been designed to avoid, minimize and mitigate adverse impacts to the shoreline environment and to result in no net loss of shoreline ecological functions.
41. The Project is considered a non-water-oriented use. Such a use is allowed at this location based on the Project not being adjacent to navigable waters and being consistent with the objectives of the Shoreline Management Act.
42. With the conditions of approval set forth in Appendix A, the Project is consistent with the goals, policies and use regulations applicable to Industrial Development established in the City SMP.
43. The subject wetland has been delineated and rated consistent with the requirements set forth in the SMP. Approximately 5,315 square feet of Category IV wetlands have been proposed to be filled as part of the Project.
44. On June 21, 2023, a comment was received from the Washington Department of Ecology addressing the need for the Project to provide compensatory mitigation and for the Applicant to submit a properly completed Mitigation Plan.
45. The Project has been designed to be consistent with the mitigation sequence established under Section 15.04.480 SMC. However, a mitigation plan prepared by a qualified consultant has not yet been submitted by the Applicant that demonstrates that all impacts to on-site wetlands will be mitigated through the purchasing of wetland mitigation credits from a mitigation bank within the corresponding service area or from the Skagit Environmental Wetland Mitigation Bank, which is outside the Sumas service area. Condition 20 from Appendix A ensures that a mitigation plan meeting applicable standards will be submitted and that appropriate compensatory mitigation will be provided that are acceptable to the Washington Department of Ecology.
46. Based on correspondence from the U.S. Army Corps of Engineers submitted by the Applicant, the filling of the subject wetland does not require approval of a permit by the U.S. Army Corps of Engineers.
47. Condition 9 from Appendix A ensures that the Project will be designed to be consistent with the Washington Department of Ecology Stormwater Management Manual for Western Washington.
48. With the conditions of approval set forth in Appendix A, the Project is consistent with Section 15.04.520 SMC.
49. Condition 2(c) from Appendix A ensure that the Project is designed and constructed consistent with the City's SMP.
50. The Project is consistent with the policy set forth in the Shoreline Management Act, Section 90.58.020 RCW.
51. With the conditions of approval set forth in Appendix A, the Project is consistent with the goals, policies and regulations set forth in the City's SMP.

52. With the conditions of approval set forth in Appendix A, the Project is consistent with the substantial development criteria established under Section 15.04.170 SMC.
53. Consistent with the timing requirements established under Section 15.04.200(B) SMC, Condition 21 from Appendix A ensures that the Project will not commence until twenty-one days after the date of filing of the permit with the Department of Ecology.
54. Consistent with the timing requirements established under Section 15.04.200(C) SMC, Condition 22 from Appendix A ensures that the Project shall be commenced within a period of two years from the date of filing of the permit with the Department of Ecology.

Zoning Setback Variance

55. A variance is a case-specific modification to existing Sumas Municipal Code that is required due to the presence of unique features on the project site that would not allow the otherwise permissible use and, thus, would cause undue hardship on the applicant. A variance is not permitted for issues related to zoning/land use as well as issues related to lot coverage (Section 20.64.010 SMC).
56. The applicant is proposing to have the front-yard setback requirement reduced from 45 ft to 35 ft due to a City easement on the back side of the property creating an undue hardship. (See finding 58 and 59 for more information)
57. The criteria for which a variance application may be granted by the Sumas City Council is listed in Section 20.64.020 SMC:
 - (a) That approval of the variance will not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone;
 - (b) That because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. Aesthetical considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute hardship under this section;
 - (c) That the approval of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.
58. The property in question includes some of those unique features that qualify the site for meeting the variance criteria. On the backside of the site, in between the application property and Mazdak International's existing property, is a City easement that at one time

was an alley running in between W Second and W Third streets. This easement is still needed by the City to access public utilities located under the alleyway. This easement causes the site to be not as deep as it would have been if the easement had not been there.

59. Due to the City's easement onto his property, the applicant was forced to design the structures to meet lot coverage and back yard setback requirements. Unfortunately, having to meet these requirements means that the structures are forced to be short of the 45 ft front yard setback requirements required in the Industrial District.
60. Based on the information included in the public record, the City Council finds that the Project is consistent with the applicable criteria for a variance and is consistent with the essential purpose for a variance.

Improvement and Performance Standards

61. Section 20.44.100 SMC establishes improvement and performance standards applicable in the Industrial District.
62. Condition 13 from Appendix A ensures that the Project will conform to the maximum ambient noise standards established by the City under Chapter 8.26 SMC.
63. Condition 16 from Appendix A ensures that the Project will conform to the performance standards established under Subsections 20.44.100 (1)-(4) SMC.
64. Subsection 20.44.100(5) SMC establishes that all operational areas shall be raised to the level of the 100-year base flood elevation. The Project proposal substantially meets this requirement. Condition 17 from Appendix A ensures that raising of all operational areas will be completed as proposed.
65. Subsection 20.44.100(6) SMC addresses access driveways, travel routes and turn-arounds. Conditions 6, 7 and 8 from Appendix A ensure that necessary access improvements, including construction of a new primary access route from Bob Mitchell Avenue, will be completed prior to commencing operations.

Other Issues

66. The Project site is mapped as being within an Area of Special Flood Hazard and is, therefore, subject to regulation under the Flood Damage Prevention ordinance, Chapter 14.30 SMC. Conditions 18 and 19 from Appendix A ensure that the Applicant will obtain approval of a floodplain development permit in conjunction with required Site or project-related improvements and in conjunction with each proposed new building.
67. Consistent with the requirement set forth in Section 20.66.010(e) SMC, Condition 20 from Appendix A ensures that the Project will be commenced within a period of one year from the date of approval of the conditional use permit.

CONCLUSIONS OF LAW

1. With the mitigation measures incorporated in the Application and in Conditions 1 through 24 from Appendix A, the Application is consistent with the Sumas Comprehensive Plan and with Title 20 SMC. The relocated foundry is allowed as a conditional use by Section 20.44.030(1) SMC.
2. With the mitigation measures incorporated in the Application and in Conditions 1 through 24 from Appendix A, the Project complies with the criteria for approval of conditional uses established at Section 20.66.020 SMC.
3. With the mitigation measures incorporated in the Application and in Conditions 1 through 24 from Appendix A, the Project is consistent with the zone-specific criteria for approval of conditional uses in the Industrial District established at Section 20.44.035 SMC.
4. The conditions of approval set forth in Appendix A are adopted under authority of Title 20 SMC as measures necessary to reach Conclusions 1, 2 and 3 above.
5. With the mitigation measures incorporated in the Application and in Conditions 1 through 24 from Appendix A, the Project is consistent with the goals, policies and regulations set forth in the City's Shoreline Management Master Program.
6. With the mitigation measures incorporated in the Application and in Conditions 1 through 24 from Appendix A, the Project complies with the criteria for approval of a zoning variance established at Chapter 20.64 SMC.
7. Any conclusion of law that is also a finding of fact is hereby adopted as such. Any finding of fact that is deemed a conclusion of law is hereby adopted as such.

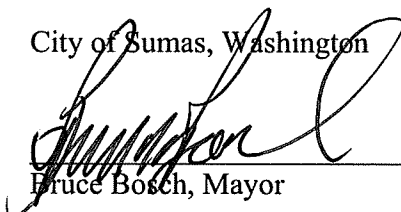
DECISION

Based upon the aforementioned findings of fact and conclusions of law, the zoning conditional use permit application is **Approved**, subject to the Conditions of Approval established in Appendix A.

Based upon the aforementioned findings of fact and conclusions of law, the shoreline substantial development permit application (SH 23-01) is **Approved**, subject to the Conditions of Approval established in Appendix A.

Based upon the aforementioned findings of fact and conclusions of law, the zoning setback variance application is **Approved**, subject to the Conditions of Approval established in Appendix A.

City of Sumas, Washington


Bruce Bosch, Mayor

6/28/2023
Date

METHOD OF APPEAL

There is no administrative appeal of the Council's decision. Pursuant to Chapter 36.70C Revised Code of Washington, any land use petition challenging the decision regarding the conditional use permit must be filed with the superior court of Whatcom County and served on the following parties within twenty-one days of the issuance of the decision:

City of Sumas
433 Cherry Street
P.O. Box 9
Sumas, WA 98295

Mazdak International, Inc.
Baha Abulnaga
P.O. Box 117
Sumas, WA 98295

Any appeal of the City Council's decision regarding the shoreline substantial development permit must be filed with the shorelines hearing board within 21 days of the date of filing with the Washington Department of Ecology as required by the state shoreline management act, RCW 90.58.

APPENDIX A TO REPORT OF DECISION

MAZDAK INTERNATIONAL INC CONDITIONAL USE PERMIT, SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT, AND ZONING VARIANCE CONDITIONS OF APPROVAL

1. All mitigation measures described in the initial Application packet and all supplemental submittals received from the Applicant are hereby incorporated as conditions of the Project, unless specifically excluded below. All permits and approvals required for the construction of the Project from either the City of Sumas or other agencies shall be obtained prior to the issuance of a business license by the City for the Project. All permits and approvals required for the operation of the Project from either the City or other agencies shall be obtained in conformance with the requirements of such agencies. The Applicant shall provide to the City copies of all permits, approvals, plans and reports prepared under the regulatory requirements of other jurisdictions, including stormwater pollution prevention plans, spill and containment contingency plans, and operations and maintenance plans for Project facilities and equipment.
2. The Project shall comply with all of the mitigating conditions established in the SEPA Mitigated Determination of Nonsignificance (MDNS) issued by the City on June 13, which include the following:
 - a. The Project shall comply with all applicable City codes.
 - b. The Project shall be constructed and operated consistent with the project description included in the environmental checklist submitted by the applicant, except as otherwise required by local, state and federal regulatory agencies including, but not limited to, the City of Sumas, the Northwest Clean Air Agency, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.
 - c. The applicant shall comply with all applicable provisions of SMC 15.04, Shoreline Management, and SMC 15.20, Critical Areas.
 - d. An engineered soils compaction report shall be submitted prior to construction for all structures placed on fill material.
 - e. Where applicable, a Section 404 Clean Water Act permit for wetland fill shall be issued by the U.S. Army Corps of Engineers prior to initiation of any wetland fill activities. The project shall comply with all conditions established in the Army Corps permit.
 - f. A Section 401 Water Quality Certification issued by the Washington Department of Ecology on behalf of the U.S. Army Corps of Engineers shall be issued prior to initiation of any wetland fill activities. The project shall comply with all conditions established in the Section 401 Water Quality Certification.
 - g. The applicant shall request a letter from the City Public Works Department stating that the water treatment facility and wastewater treatment facilities are anticipated to have sufficient capacity to support the project over the 20-year Capital Facilities planning horizon.
 - h. The applicant shall obtain all required permits and approvals from the Northwest Clean Air Agency and shall comply with all requirements established in said permits and approvals.
 - i. The applicant shall prepare a Fugitive Dust Plan and shall keep a copy onsite.

- j. Pursuant to SMC 8.26.030, the project shall operate in compliance with adopted maximum ambient noise standards.
 - k. The Applicant shall provide compensatory mitigation for all filling of wetlands. The applicant shall also receive and show proof of a letter of approval from the Washington State Department of Ecology for any proposed mitigation strategies prior to the commencement of construction activities.
- 3. Prior to the start of construction, the Applicant shall provide a final site plan to the City demonstrating that the completed Project will be in conformance with the open space requirement established under Section 20.44.080 SMC.
- 4. All construction-related plans shall be submitted to the City for review and approval prior to construction.
- 5. All proposed access points and access driveways shall include vehicle approaches and paved aprons meeting City approval based on the size of vehicles accessing the Site.
- 6. The Project shall incorporate access improvements meeting City standards for a private industrial driveway from W. Second Street to the Site. The design of said access improvements shall be reviewed and approved by the Public Works Director prior to construction and shall include a paved surface of sufficient width to accommodate two-way truck traffic and emergency vehicle access to the Site.
- 7. Water, sewer and electrical utilities shall be extended to the Site according to engineering plans reviewed and approved by the City Public Works Director. Said improvements shall include all on-site and off-site utility improvements necessary to serve the Project. Prior to construction, the Applicant shall submit construction plans for all such on-site and off-site improvements supported by engineering calculations, where appropriate. Access and utility easements in favor of the City from W Second St to the Site shall be granted and recorded prior to Project operation.
- 8. As proposed by the Applicant, only domestic waste from non-industrial sources shall be discharged to the public sanitary sewer system. Discharge of industrial waste of any kind, including wash-down water, is prohibited.
- 9. A storm drainage system designed in conformance with the Washington Department of Ecology Stormwater Management Manual for Western Washington shall be constructed to serve the Project. Engineering plans accompanied by a Stormwater Site Plan Report shall be submitted for review and approval prior to construction to the satisfaction of the Public Works Director.
- 10. The Project shall comply with the noise standards established in Chapter 8.26 SMC. If a reasonable complaint is received asserting that City noise standards are being exceeded due to Project facilities or operations, the Applicant shall, at the request of the City, provide appropriate sound level measurements on the complainant's property or on the Project Site adjacent to the complainant's property. In the event that the Chief of Police determines that the Project is in violation of the noise standards, he shall issue a notice to correct the violation with an associated compliance schedule; and, in accordance with that schedule, the Operator shall modify facility operations or install noise attenuation measures in order to achieve compliance with said noise standards.
- 11. Prior to commencing operation, the Project shall obtain all required permits and approvals from the Northwest Clean Air Agency. Copies of all such permits and approvals shall be provided to the City.

12. Prior to City approval of final construction plans, the Fire Chief shall review said plans and recommend any site and/or operational modifications necessary to ensure safe access to the Site for emergency vehicles and/or to reduce threats to public safety.
13. The Project shall at all times comply with the performance standards established under Subsections 20.44.100 (1)-(4) SMC.
14. Prior to commencing operations, all operational areas as shown on the Site Plan drawings shall be effectively raised through the placement of approved fill to the elevation of the 100-year base flood as established on the applicable FEMA flood insurance rate map.
15. The Applicant shall obtain approval of a floodplain development permit in relation to all Site and other project-related improvements within the 100-year floodplain, including for each proposed structure.
16. All enclosed buildings shall have the lowest floor elevated to two feet above the FEMA base flood elevation consistent with the requirements set forth in Chapter 14.30 SMC.
17. The Project shall be commenced within a period of one year from the date of council approval; otherwise, the conditional use permit shall lapse, unless a one-year extension is granted in advance by the City Council.
18. All authorized work shall be accomplished consistent with the below-listed permits, plans and specifications, except where superseded by the provisions of this permit, in which case the provisions of this permit shall apply. Copies of these documents shall be available on site during construction, together with a copy of this permit approval.
 - a. Project plans and specifications approved by the City;
 - b. City of Sumas Grade and Fill Permit;
 - c. City of Sumas Floodplain Development Permit;
 - d. If applicable, Washington Department of Fish and Wildlife Hydraulic Project Approval;
 - e. Wetland mitigation plan approved by the Washington Department of Ecology; and
 - f. Washington Department of Ecology administrative approval for filling of a wetland.
19. The contractor shall notify the Sumas Public Works Director in writing by fax at (360) 988-8855 at least 3 business days prior to commencement of development activity at the Site. The notification shall include the proposed schedule of activities at the Site. The notification shall identify the on-site supervisor of the project and shall provide a phone number that can be used to reach the supervisor continuously throughout each construction day.
20. The Final Wetland Mitigation Plan shall be fully implemented as approved by the City and the Washington Department of Ecology. Copies of all reports required by Ecology shall be submitted to the City at the same time.
21. The Project shall not commence for a period of twenty-one days from the date of filing of the shoreline permit with the Washington Department of Ecology.
22. The Project shall be commenced within a period of two years from the date of filing of the shoreline permit with the Washington Department of Ecology and construction shall be completed within a period of five years from said date of filing.
23. Prior to building permit approval, geotechnical investigations shall be completed by a qualified geotechnical engineer demonstrating the suitability of existing on-site soils in

relation to the proposed industrial construction. Mitigating measures presented in any such report shall be incorporated into the Project as deemed necessary by the Public Works Director to ensure that all City building code requirements are met to mitigate risks, if any, related to construction on soils potentially subject to instability during seismic events.

24. Any finding of fact or conclusion of law that is also a condition of approval is hereby adopted as such.