

## PLANNING & ZONING DEPARTMENT

### Before the Mayor and City Council Meeting of May 20, 2024

#### PUBLIC HEARING ITEM STAFF REPORT

Parker Bodily, AICP  
Senior Planner

**Appeal of Planning & Zoning Commission Denial of Conditional Use Permit for Concrete Batching & Mixing in an IL (Light Industrial) zoning district** at 39 N Picard Ln (a 7.83 acre parcel #3174500000, located in the S 1/2 of Section 24, T3N, R2W, BM), for Sunroc Corporation (CUP-00328-2023, APL-00020-2024). (Action: [Decision or Remand](#))

Original Concept: Development and operation of a concrete batch plant.

Appealed by representatives of the applicant.

February 27, 2024 – The Planning and Zoning Commission voted to deny the conditional use permit and adopted the proposed findings for denial as shown in the attached documents.

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#### APPEAL STAFF ANALYSIS

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**Appeal of Commission Decision:** Among the grounds for appeal alleged by the Applicant, the representative for the applicant, in the narrative provided, claims that the Commission decision was flawed in that the decision made was based on criteria that was not adopted in City Code at the time the application was submitted. The timeline below shows that the P&Z Commission did use the incorrect criteria to review the CUP in that it used the new criteria in Ordinance #4777 instead of the criteria in place when the application was submitted. Staff recommends that the Council- in this appeal consider the request for the CUP under the criteria in effect when the application was submitted and render its decision in accordance with those criteria. Alternatively, the Council could remand the application back to the Planning and Zoning Commission to conduct another public hearing under the criteria that were in place at the time of application and render a new decision.

**Timeline:**

- **September 6, 2023** - Zoning Text Amendment approved by City Council changing Conditional Use Permit Criteria in NCC 10-25-4.
- **December 8, 2023** - Complete Conditional Use Permit application submitted by applicant.
- **December 18, 2023** – Conditional Use Permit Application scheduled for a public hearing.
- **December 18, 2023** - City Council reads and approves Ordinance #4777 with new Conditional Use Permit Criteria.

Below is the comparison showing the differences between the previous conditional use permit criteria and the criteria that are currently in place. The previous criteria consisted of three points:

- 10-25-4.A.1: The location, size, and design and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be

given to harmony in scale, bulk, coverage and density, to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

- 10-25-4.A.2: The location, design and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.
- 10-25-4.A.3: The proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The above are the criteria applicable to this application.

The new criteria expand the three previous criteria into five more concise and clarifying points:

- 10-25-4.A.1: That the proposed use is supported by the Nampa Comprehensive Plan.
- 10-25-4.A.2: That the design, construction, operation and maintenance of the property and project will not adversely impact the intended character and appearance of the general vicinity.
- 10-25-4.A.3: That the proposed use will be served adequately by essential public facilities and services.
- 10-25-4.A.4: That the proposed use will not be detrimental to the economic welfare of the community.
- 10-25-4.A.5: That the proposed use will not involve activities or processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or general welfare by reason of excessive traffic, noise, smoke, fumes, glare or odors.

While these criteria may be textually different much of the overall intent is similar, The Planning and Zoning Commission voted to deny the application because the proposed use would create conditions that make it incompatible with the adjacent airport and the surrounding neighborhood.

The applicant also argues in their narrative that the decision was entirely based on public comment and not evidence. All comments and information received from the public and anyone else as part of the process is evidence that may be considered and weighed by the City Council. The applicant claims that the evidence provided supports the request and that the application meets all the conditional use permit criteria for approval. Staff would make a point that a previous Conditional Use Permit (CUP-00303-2022) approval does not guarantee approval of a future conditional use permit- each are evaluated at the time under applicable city and state code. With each application, staff sends notices to public agencies as well as the general public for comment. Analysis is then done on information received and ultimately a decision is made based on such comments which may include information that was not previously submitted under prior historical applications.

**Recommendation:** NCC § 10-25-13 allows the Council to affirm, reserve or modify any decision, determination, or requirements of the Commission. Staff would recommend that the City Council modify the Planning and Zoning Commission decision and use the conditional use permit criteria in place at the time of application in making a decision on the conditional use permit request. City Council also has the ability to remand the decision back to the Planning and Zoning Commission.

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## APPLICABLE REGULATIONS

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## **Nampa City Code, Title 10**

### **Conditional Use Permits**

#### **10-25-10: APPEALS AND FEE**

During the fifteen (15) day period from the date of the action by the Commission, written appeals from action of the Commission may be taken to the Council by the applicant or other interested party. The use permit shall not become effective until the determination of any appeal pending against it. Appeals accompanied by the appropriate fee as established by resolution of the City Council shall be filed with the Planning and Zoning Department. Said office shall transmit a notice of appeal to the City Clerk.

#### **10-25-13: ACTION ON APPEALS BY COUNCIL**

The Council, at the next duly held meeting, shall set a date and time for a public hearing on any appeal of the Planning and Zoning Commission's grant of a CUP and notify affected parties and property owners within three hundred feet (300') of the property made the subject of the appeal. The Commission or Planning staff shall submit to the Council a report setting forth reasons for the Commission's action. Alternatively, members of the Commission shall be present at the Council's public hearing to represent the Commission's position on the matter. The Council, after said public hearing, shall render its decision within twenty-one (21) calendar days. The Council may by resolution affirm, reserve or modify any decision, determination or requirements of the Commission, but before granting any item which was denied by the Commission or before changing any of the conditions imposed by the conditions in the use permit, the Council shall make written findings of facts setting forth wherein the Commission findings were in error.

## **Nampa City Code, Title 10, Chapter 25-1**

Certain types of uses require special consideration prior to their being permitted in a particular district. The reason for special consideration involves, among other things, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the use, the effect such uses have on any adjoining land uses and on the growth and development of the community as a whole.

All uses permitted conditionally are declared to typically possess such unique and special characteristics as to make impractical their being included as outright uses in any of the various districts defined within this title. The authority for the location and operation thereof shall be subject to review and the issuance of a conditional use permit (CUP). The purpose of review shall be to determine that the characteristics of any such use shall not be unreasonable or incompatible with the type of uses permitted in surrounding areas, and for stipulating such conditions as may be reasonable so that the basic purposes of the chapter shall be served. Nothing construed herein shall be deemed to require the Commission to grant a CUP.

#### **10-25-4: CONDITIONAL USE PERMIT CRITERIA**

**10-25-4.A:** A Conditional Use Permit may be granted only if the proposal conforms to all the following conditional use permit criteria, provisions of the zoning ordinance unless lawfully waived or modified by authorization of the Commission, and the Nampa comprehensive plan. The conditional use permit criteria are as follows:

**10-25-4.A.1:** The location, size, and design and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density, to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

**10-25-4.A.2:** The location, design and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.

**10-25-4.A.3:** The proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

#### **NCC § 10-19-1: IL (Light Industrial) District/Zone**

The IL light industrial district is intended to create, preserve and enhance areas containing a wide range of manufacturing and related establishments, and is typically appropriate to areas providing a wide variety of sites with good rail or highway access.

#### **10-1-9: Performance Standards**

All operations conducted on the premises shall not be allowed to constitute a nuisance by reason of smoke, fumes, odor, steam, gases, vibrations, noise, hazards or other causes, beyond the property boundary lines, and shall comply with the performance standards of this section.

Any dissemination incident to a permitted use shall comply with the following standards:

##### **10-1-9.E: Emissions:**

**10-1-9.E.1: General Prohibitions:** The emission of obnoxious odors of any kind, as well as any toxic or corrosive fumes or gases is not permitted.

**10-1-9.E.2: Industrial Dust:** Dust created by an industrial operation shall not be exhausted or wasted into the air.

**10-1-9.E.3: Smoke and Particulate Matter:** The emission or smoke or particulate matter of a density equal to or greater than number 3 on the "Ringelmann chart," as currently published and used by the U.S. Bureau of Mines, is prohibited at all times. Dust and other types of air pollution borne by the wind from such sources as storage areas and roads shall be minimized by appropriate landscaping, paving, oiling or other acceptable means. Emission of particulate matter in excess of 0.2 grain per cubic foot of conveying gas or air measured at any property line is prohibited.

The rate of emission of particulate matter from all sources on any property shall not exceed a net weight of one pound per acre of property during any one hour.

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## **PROPERTY DETAILS**

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#### **Current Jurisdiction/Status:**

The property has been annexed and zoned IL (Light Industrial)

#### **Surrounding Zoning:**

**North:** IL (Airport)

**South:** IL (Heath Specialty Precast)

**East:** County (Vision Recycling)

**West:** County (AG land) & IL (Dealers Auto Auction)

#### **History:**

**September 2019** – City Council approved annexation and zoning to IL (Light Industrial) zoning district with conditions.

**February 2023** – Planning and Zoning Commission voted to approve a conditional use permit for concrete batching & mixing. (CUP-00303-2022).

**March 2023** – Applicant applied for a DEQ Permit (air quality) & FAA approval

**April 2023** – FAA issues determination of no hazard to air navigation.

**September 2023** – possible expiration of CUP

**October 2023** – DEQ issues permit (air quality)

**Fall 2023** - Sunroc demolishes buildings and removes trees without pulling a demolition permit.

**November 2023** – Pre-application meeting held with City staff to discuss status of project and next steps. Staff informs applicant that a new CUP must be issued due to no City permits being issued within 6 months of CUP issuance.

**December 2023** – New application for a CUP is submitted.

**January 2024** – New CUP is scheduled, advertised, and noticed.

**February 2024** – Nampa Planning and Zoning Director issues revocation letter of CUP-00303-2022 based on non-compliance with conditions of approval.

**January 23, 2024** –Planning and Zoning Commission vote to continue the public hearing item to February 27, 2024.

**February 27, 2024** –Planning and Zoning Commission vote to deny a conditional use permit for concrete batching & mixing. (CUP-00328-2023).

**March 13, 2024** – Applicant submit appeal application.

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## CORRESPONDENCE

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**City department comments** have been received regarding both the entitlement request and platting approval request associated with this matter [and report]. Such correspondence, by way of information, as received from agencies or the citizenry regarding the application package [received by noon May 15, 2024] is hereafter attached to this report. Other agency and public comments will not be listed here but are attached to this staff report.

**Nampa Fire District:** stating required conditions of development. See attached memo for further details.

**Nampa Meridian Irrigation District:** stating the easements for the Mason Creek Drain, the North Dobson Drain and South Dobson Drain. Any encroachment without a signed License Agreement and approved plan before construction is unacceptable. See attached memo for further details.

**Idaho Transportation Department:** requesting that the applicant contact ITD Division of Aeronautics to ensure development is within FAA regulations and guidelines.

**Engineering Division:** stating requirements for access, traffic impact study, and utilities. See attached memo for further details.

**Nampa Airport Commission:** Explanation of why CUP criteria have not been met. See attached memo for further details.

**Nampa Municipal Airport:** Concern of possible dust and contaminants being blown over the Nampa Airport. Pilots have reported having to “go-around” due to visual obstruction. Engines may ingest particulates also. The Airport would like to be assured any dust and particulates generated from the plant do not interfere with the airport’s operational safety.

**Warhawk Air Museum:** Opposed to the proposed use at this location. See attached memo for further details.

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## CUP STAFF ANALYSIS

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**Immediately Surrounding Land Uses:** The subject property is adjacent to a mix of industrial type uses and Ag land. The Nampa Airport is the northern adjacent property and is the predominate use in the area.

**Zoning:** The property is zoned IL (Light Industrial).

**Comprehensive Plan:** The future land use designation is Industrial.

**Light industrial** uses are oriented to industries that are less impactful to surrounding land uses, require lighter utility use, cleaner in operations and emissions, and located in areas that are easily accessible by large vehicles. These are important land uses that assist the City to diversify its economy with new and renovated industrial properties.

Uses include processing, warehousing and manufacturing of goods, research and development, flex space (office/warehouse/shop) development, wholesaling, distribution, general agricultural crop farming and animal husbandry, laboratory, lumber sales, nurseries, petroleum storage, indoor entertainment/amusement/recreation/sporting, automobile sales and service, restaurant, truck stop, drive-in theater, construction trade sales office, landscape/horticultural center/services, animal hospital, plant laundry facility, cold storage lockers, motel, printing and publishing, etc.

### **14.6.2 State of Idaho Airspace Related Regulations Idaho Code, Title 21, Aeronautics, Chapter 5 – Airport Zoning Act**

Title 21, Chapter 5, Airport Zoning Act, of Idaho Code establishes state authority to prevent the establishment of Aviation Hazards contrary to the public interest in the State of Idaho. Per Title 21, an Aviation Hazard is defined as the following:

“Aviation hazard” means any new or existing structure, object of natural growth, use of land, or modification thereto, which endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.” Title 21, Chapter 5, grants authority to the Director of the Idaho Transportation Department to mitigate impacts of aviation hazards to air flight including the prevention or removal of structure that may become or present an obstruction to airspace.

### **14.7 Airport Hazards and Land Use Considerations**

The avoidance of hazards is an important factor in maintaining safe airport operations and a safe community. It requires competent land use planning and a multi-jurisdictional approach. Effective, comprehensive land use compatibility plans take such considerations into account and incorporate both height restrictive and basic land use restrictions via zoning. Coupled with other proactive measures, such as voluntary noise abatement programs and selective fee-simple land acquisition, proactive planning around the airport will protect both the airport and the surrounding community. It is important to point out there is a very distinct difference between height restrictive zoning and basic land use zoning. As its name implies, height restrictive zoning to protect airport airspace generally has the intent of protecting the airspace around an airport from objects or structures which may pose hazards to aircraft operators. On the other hand, the intent of land use zoning should be to prevent incompatible land uses near an airport where the impacts of airport operations, such as noise, dust, fumes, and/or aircraft accidents, can have a potentially negative

impact on that land use or the impact of the incompatible land use can have a potentially negative impact on the airport.

**Airport Master Plan:**

**11.6 COMPATIBLE LAND USE** “Land use planning is important to ensure that airport investments are not affected by incompatible land uses adjacent to and in the immediate vicinity of the airport. Incompatible land uses at or near airports may result in the creation of hazards to air navigation, reductions in airport utility resulting from obstructions to flight paths, or noise related incompatible land use resulting from residential areas too close to the airport.

Compatibility of land use is attained when the use of property adjacent to and near the airport neither adversely affects flight operations from the airport nor is itself adversely affected by the flight operations. Land uses that adversely affect flight operations are ones that create or contribute to a flight hazard. These can include tall structures, features that inhibit pilot visibility such as light or smoke, produce electronic aberrations in navigational guidance systems, or that attract birds.

Some common incompatible land uses include the introduction of a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport. Other incompatible land uses include wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, golf courses, and other bird attractants. Towers or buildings that penetrate Part 77 surfaces or are located within a runway protection zone (RPZ), runway object free area (ROFA), object free zone (OFZ), and clearway or stopway are also incompatible uses.”

**Nampa Municipal Airport:** Airport staff and Airport Commission have concerns of non-compatibility due to emissions from the proposed use. This is beyond what the FAA has reviewed in reaching its determination of no hazard to air navigation which is specific to structure height.

**Compatibility:** The Council must determine whether the proposed use of concrete batching and mixing is compatible to abutting properties and the surrounding neighborhood.

Distances to nearby uses:

- 215' to the nearest airport runway.
- 870' to the nearest residence At SWC of Victory and Grays.
- .33 miles to the Warhawk Air Museum.
- 0.54 miles to Endeavor Elementary.
- 0.59 to Park Ridge Elementary.

**Emissions:** Idaho Department of Environmental Quality requires a permit for a concrete batch plant and has additional requirements to be met. DEQ has issued a permit based on the information provided to them in the Permit to Construct application. DEQ has standards for the operation of the facility that it reviews in issuing a permit and the applicant agrees to follow said standards in their operation. DEQ does not consider adjacent land uses in their decision-making process.

**Improvements:** Should the Council vote to modify the decision to approve; it is recommended that improvements be made to the lot that reduce emissions from the property. This may include fencing, landscaping, paving, etc. As required in 10-22-5.E.3.a.i, any area that is not paved will have to be completely enclosed/screened from view from any abutting public right-of-way, however there is no adjacent public right-of-way to this parcel.

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## RECOMMENDED CONDITIONS OF APPROVAL

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If the City Council analyzes the conditional use permit under the criteria in effect when the application was submitted and votes to modify the decision of the Planning and Zoning Commission and grant the conditional use permit for Concrete Batching & Mixing, recommended conditions of approval are as follows:

1. Emission of particulate matter in excess of 0.2 grain per cubic foot of conveying gas or air measured at any property line is prohibited.
2. The rate of emission of particulate matter from all sources on any property shall not exceed a net weight of one pound per acre of property during any one hour.
3. The emission or smoke or particulate matter of a density equal to or greater than number 3 on the "Ringelmann chart," as currently published and used by the U.S. Bureau of Mines, is prohibited at all times.
4. Any dumping, mixing, or crushing of materials shall be done within an enclosed space.
5. Applicant shall request ITD Aeronautics perform a land use compatibility analysis and shall mitigate any issues resulting from said analysis.
6. Applicant/Owner shall comply with all City Codes, Policies, and Standards in place at the time of property development/redevelopment.
7. Any onsite wells shall be abandoned and/or removed in accordance with Local and State regulations at the time of property development/redevelopment and prior to connection to City services.

Existing onsite wells may continue to be used solely as water supply for the batch plant operation. No cross connection between well and the City's domestic water system will be permitted.
8. Utility connection fees shall be paid at time of Building Permit.
9. Property shall be annexed in the Nampa Municipal Irrigation District at the time of connection to pressure irrigation and prior to being served by the City's pressure irrigation system. Applicant/ Owner shall provide documentation to the Nampa Engineering Division verifying water rights for the full parcel.
10. Site access shall adhere to current City of Nampa Access Management Policy and all comments concerning site access as described in the memorandum from the Nampa Engineering Division for "CUP-00328-2023 – Concrete Batching & Mixing in IL Zone", dated January 3, 2024. The applicant shall perform traffic analysis as warranted by the adopted City of Nampa Traffic Impact Study Policy and shall coordinate the study scope with the Nampa Engineering Division. The estimated trip generation shall as accurately as possible reflect the total number of daily truck trips based on the maximum daily production allowance per the Idaho DEQ permit. The study shall be approved by the Nampa Engineering Division and the Applicant perform all identified project triggered mitigation measures prior to the plant becoming operational.
11. Development/Redevelopment of the property shall comply with conditions and requirements defined in the existing Aviation Easement established in 1975 and as Instrument No. 755201 in the records of Canyon County, Idaho.
12. The Applicant shall file FAA Form 7460 prior to commencing the building of any structure(s) on the property.
13. Applicant/Owner shall comply with Idaho Department of Environmental Quality requirements.
14. The CUP shall be issued to Sunroc Corporation without the ability to transfer the Conditional Use Permit to another owner or location.
15. Any additional conditions the Council may add...

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## POTENTIAL FINDINGS

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### Findings for Commission decision:

- The criteria used by the Planning and Zoning Commission to evaluate the conditional use permit should have been those in place on December 8, 2023 and not those contained in Ordinance #4777 which was adopted by City Council on December 18, 2023.
- The complete application for CUP-00328-2023 was submitted on December 8, 2023.

Conclusion: The criteria presented by staff and used in the decision by the Planning and Zoning Commission had not been adopted by the City Council at time of application of the conditional use permit. Therefore, the City Council modifies the decision by the Planning and Zoning Commission and uses the criteria in effect when the application was submitted and finds the following regarding the conditional use permit request:

### Potential Findings for **denial**:

1. **The location, size, and design and operating characteristics of the proposed development will not be compatible with and will adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density, to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

- **Nampa 2040 Comprehensive Plan:**

- **5.9 Industrial Land Use Designation:** This zone permits industrial land uses that are designated as light industrial and heavy industrial. Light industrial uses are oriented to industries that are less impactful to surrounding land uses, require lighter utility use, are cleaner in operations and emissions, and located in areas that are easily accessible by large vehicles. These are important land uses that assist the City to diversify its economy with new and renovated industrial properties. Heavy Industrial land uses are generally more impactful to the environment and surrounding land uses. They have a potential to affect the public health and safety due to sound, odors, vibrations. Examples of this type of land use is a rendering plant, automobile pick- and-pull, and junk yard. They require more intensive utility service connections and large vehicle access. Light and Heavy Industrial Land is shown as an 'Industrial' Land Use Setting on the Future Land Use Map. The City's Zoning Code should show and differentiate between both uses on the zoning map.
- **13.2.4 Particulate Matter (10 micrometers):** Particulate matter includes solid matter and liquid droplets suspended in the air. Particles between 2.5 and 10 micrometers in diameter are called coarse particles. PM10 includes fine (PM2.5) and coarse particles. Coarse particles typically come from crushing or grinding operations and dust from roads. PM10 can aggravate respiratory conditions such as asthma. People with respiratory conditions should avoid outdoor exertion if PM10 levels are high.
- **13.2.5 Fugitive Dust:** Dust is particulate matter (PM) consisting of very small liquid and solid particles. Fugitive dust is PM suspended in the air primarily from soil that has been disturbed by wind or human activities, such as earthmoving and vehicular/equipment traffic on unpaved surfaces. It is not emitted from vents, chimneys, or stacks.

Treasure Valley's weather contributes to the fugitive dust problem. Unlike most other areas of the country, Idaho has a wet season and a dry season. Long, hot summers

allow the soil to dry out thoroughly and, if the surface is disturbed repeatedly, the soil may have months to blow away before normal rainfall can again saturate and hold it in place. The Nampa Area is prone to high winds, making matters worse.

- Concrete dust is known to be corrosive to the oxide layer of metals such as aluminum affecting both inside and outside of a plane, as well as metal structures on the airport.
- As a recipient of FAA Airport Improvement Program (AIP) grant funding the recipient sponsor, the City of Nampa, agrees to several Grant Assurances. Grant Assurance 19: Operations and Maintenance – stipulates the Sponsor (the City of Nampa) may not cause or permit any activity or action that would interfere with the use of the airport for aviation purposes. Grant Assurance 21: Compatible Land Use- Stipulates that the Sponsor will take appropriate action, to a reasonable extent, to restrict the use of land or activities adjacent to the airport to purposes that are not compatible with normal airport operations. Violation of FAA grant assurances could result in loss of future funding as well as the potential to repay the FAA for the past 20-years of grant contributions totaling approximately \$11 million dollars.

Conclusion: The Nampa Comprehensive Plan states that heavy industrial uses include those that are generally more impactful to the environment and surrounding land uses. The proposed use, due to its bulk and scale, would be considered a heavy industrial use and would not meet the classification of light industrial. The proposed use would emit fugitive dust and particulate matter that would adversely affect the livability, appropriate development, and operation of abutting properties and the surrounding neighborhood.

**2. The location, design and site planning of the proposed development will not provide a convenient and functional living, working, shopping, or civic environment, and will not be as attractive as the nature of the use and its location and setting warrants.**

- **Airport Master Plan:**
  - **11.6 COMPATIBLE LAND USE** “Land use planning is important to ensure that airport investments are not affected by incompatible land uses adjacent to and in the immediate vicinity of the airport. Incompatible land uses at or near airports may result in the creation of hazards to air navigation, reductions in airport utility resulting from obstructions to flight paths, or noise related incompatible land use resulting from residential areas too close to the airport.

Compatibility of land use is attained when the use of property adjacent to and near the airport neither adversely affects flight operations from the airport nor is itself adversely affected by the flight operations. Land uses that adversely affect flight operations are ones that create or contribute to a flight hazard. These can include tall structures, features that inhibit pilot visibility such as light or smoke, produce electronic aberrations in navigational guidance systems, or that attract birds.

Some common incompatible land uses include the introduction of a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport. Other incompatible land uses include wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, golf courses, and other bird attractants. Towers or buildings that penetrate Part 77 surfaces or are located within a runway protection zone (RPZ), runway object free area (ROFA), object free zone (OFZ), and clearway or stopway are also incompatible uses.”

- **Nampa 2040 Comprehensive Plan:**

- **14.5 Importance and Regulation of Airport:** Nampa Municipal Airport is an integral part of Nampa's transportation connection to the region, state and nation. The airport is an important asset to the community in terms of commerce, emergency services and economic development. The land uses surrounding the airport are required to be compatible with airport operations and comply with FAA and state regulations. These land use restrictions affect residential, commercial and industrial uses.

- **14.6.2 State of Idaho Airspace Related Regulations Idaho Code, Title 21, Aeronautics, Chapter 5 – Airport Zoning Act:** Title 21, Chapter 5, Airport Zoning Act, of Idaho Code establishes state authority to prevent the establishment of Aviation Hazards contrary to the public interest in the State of Idaho. Per Title 21, an Aviation Hazard is defined as the following:

“Aviation hazard” means any new or existing structure, object of natural growth, use of land, or modification thereto, which endangers the lives and property of users of an airport, or of occupants of land in its vicinity, and that reduces the size of the area available for landing, taking off and maneuvering of aircraft, or extends up into the airspace between airports to cause disastrous and needless loss of life and property.” Title 21, Chapter 5, grants authority to the Director of the Idaho Transportation Department to mitigate impacts of aviation hazards to air flight including the prevention or removal of structure that may become or present an obstruction to airspace.

- **14.7 Airport Hazards and Land Use Considerations:** The avoidance of hazards is an important factor in maintaining safe airport operations and a safe community. It requires competent land use planning and a multi-jurisdictional approach. Effective, comprehensive land use compatibility plans take such considerations into account and incorporate both height restrictive and basic land use restrictions via zoning. Coupled with other proactive measures, such as voluntary noise abatement programs and selective fee-simple land acquisition, proactive planning around the airport will protect both the airport and the surrounding community. It is important to point out there is a very distinct difference between height restrictive zoning and basic land use zoning. As its name implies, height restrictive zoning to protect airport airspace generally has the intent of protecting the airspace around an airport from objects or structures which may pose hazards to aircraft operators. On the other hand, the intent of land use zoning should be to prevent incompatible land uses near an airport where the impacts of airport operations, such as noise, dust, fumes, and/or aircraft accidents, can have a potentially negative impact on that land use or the impact of the incompatible land use can have a potentially negative impact on the airport.
- **5.9 Industrial Land Use Designation:** This zone permits industrial land uses that are designated as light industrial and heavy industrial. Light industrial uses are oriented to industries that are less impactful to surrounding land uses, require lighter utility use, are cleaner in operations and emissions, and located in areas that are easily accessible by large vehicles. These are important land uses that assist the City to diversify its economy with new and renovated industrial properties. Heavy Industrial land uses are generally more impactful to the environment and surrounding land uses. They have a potential to affect the public health and safety due to sound, odors, vibrations. Examples of this type of land use is a rendering plant, automobile pick- and-pull, and junk yard. They require more intensive utility service connections and large vehicle access. Light and Heavy Industrial Land is shown as an ‘Industrial’

Land Use Setting on the Future Land Use Map. The City's Zoning Code should show and differentiate between both uses on the zoning map.

Conclusion: The proposed use would not provide a convenient and functional civic environment because it will be a hazard to the airport which is an important asset to the community in terms of commerce, emergency services and economic development. Specifically, the proposed use would inhibit pilot visibility and obstruct flight paths.

**3. The proposed development will not enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

- Unacceptable aviation hazards will be created – vertical exhaust penetrates and encroaches on currently used airspace (required pilot/flying separation is 1000' above ground level).
- The proposed use directly affects the current FAA approved and established traffic pattern in the airspace above the property because the FAA AIM would require pilots to give 1000 feet of clearance in all directions from any proposed smokestacks, silos, and steam-emitting buildings. This puts the steam in/visible at 1,073 feet above ground level which affects and includes all traffic patterns at the airport: helicopters, ultralight aircraft, and all other fixed wing aircraft currently operating legally at 500-1000 feet above ground level.
- The proposed structures are located 686 feet from the edge of the runway.
- **Nampa 2040 Comprehensive Plan:**
  - **14.5 Importance and Regulation of Airport:** Nampa Municipal Airport is an integral part of Nampa's transportation connection to the region, state and nation. The airport is an important asset to the community in terms of commerce, emergency services and economic development. The land uses surrounding the airport are required to be compatible with airport operations and comply with FAA and state regulations. These land use restrictions affect residential, commercial and industrial uses.

Conclusion: The proposed use and structures would not enhance the successful operation of the surrounding area in its basic community functions due to its proximity to the airport. It would be considered a hazard to the airport due to the size and emission of the operation.

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## POTENTIAL MOTIONS

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### DENY:

I move to modify the decision of the Commission and pursuant to the criteria in place when the application was submitted deny the **Conditional use permit for the operation of a concrete batch plant in an IL (Light Industrial) zoning district** at 39 N Picard Ln for Sunroc Corporation (CUP-00328-2023) and direct staff to prepare written findings in accordance the applicable information received, discussion of the city council and the information and proposed findings contained in the staff report.

### APPROVE:

I move to modify the decision of the Commission and pursuant to the criteria in place when the application was submitted approve the **Conditional use permit for the operation of a concrete batch plant in an IL (Light Industrial) zoning district** at 39 N Picard Ln for Sunroc Corporation (CUP-00328-2023) because... (state the error in the Commission findings and how each criteria is met) and direct staff to prepare written findings for consideration of the city council.

**REMAND:**

I move to remand the application back to the Commission for the **Conditional use permit for the operation of a concrete batch plant in an IL (Light Industrial) zoning district** at 39 N Picard Ln for Sunroc Corporation (CUP-00328-2023) to conduct another public hearing under the correct criteria because the criteria presented by staff and used in the decision by the Planning and Zoning Commission had not yet been adopted by the City Council at time of submittal of application for the conditional use permit.

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**ATTACHMENTS**

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- 1) Appeal Application
- 2) Appeal Narrative & Exhibits
- 3) CUP Application
- 4) CUP Narrative
- 5) Site Plan
- 6) Aerial view
- 7) Zoning and location map
- 8) DEQ application and permit
- 9) FAA determination
- 10) Ordinance #4777
- 11) Agency comments
- 12) Public comments