



**E-FILED**  
**CNMI SUPERIOR COURT**  
 E-filed: Mar 11 2024 03:06PM  
 Clerk Review: Mar 11 2024 03:06PM  
 Filing ID: 72474478  
 Case Number: 22-0103-CV  
 N/A

*By order of the Court, Judge Pro Tem, David A. Wiseman*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE SUPERIOR COURT  
 FOR THE  
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<p><b>ANAKS OCEAN VIEW HILL SAIPAN          HOMEOWNERS’ ASSOCIATION, LTD.,</b></p>	)	<p><b>CIVIL ACTION NO. 22-0103</b></p>
<p><b>Petitioner,</b></p>	)	
<p><b>vs.</b></p>	)	<p><b>ORDER ON PETITION FOR          JUDICIAL REVIEW OF          AGENCY ACTION</b></p>
<p><b>PERRY INOS, JR., et al.,</b></p>	)	
<p><b>Respondents.</b></p>	)	

**I. INTRODUCTION**

**BEFORE THIS COURT** is Petitioner ANAKS Ocean View Hill Saipan Homeowners’ Association, Ltd.’s (“Petitioner” or “ANAKS”) brief in support of its Petition for Review of Commonwealth Zoning Board Order for Conditional Use Permit, to Set Aside and to Compel Agency Action Under the APA, and for Injunctive Relief, filed on October 2, 2023 (“ANAKS’s Opening Brief”). The Commonwealth Zoning Board (“Respondents” or the “Zoning Board”) and Intervenor Atkins Kroll Saipan, Inc. (“AK”) filed responses to ANAKS’s Opening Brief on October 23, 2023 (respectively, “Zoning Board’s Response Brief” and “AK’s Response Brief”). Albert LG. Camacho and Paul William Camacho as Trustees of Lot E.A. 896 (“Trustees”) filed a joinder to the Zoning Board’s and AK’s Response Briefs on October 23, 2023. ANAKS filed a consolidated reply brief on November 13, 2023 (“ANAKS’s Reply Brief”).

The Court heard oral arguments on the parties’ briefs on November 14, 2023. Attorneys Kathryn B. Fuller and Colin M. Thompson appeared on behalf of ANAKS. Chief Solicitor J. Robert Glass Jr. appeared via Microsoft Teams on behalf of the Zoning

1 Board. Attorneys Sean E. Frink and Rodney J. Jacob appeared on behalf of AK. Attorney  
2 Joey P. San Nicolas appeared on behalf of the Trustees.

3 Based upon a review of the arguments, filings, and relevant law, and for the reasons  
4 stated herein, the Court **AFFIRMS** the Zoning Board’s decision to grant Conditional Use  
5 Permit No. 2020-10382, **AFFIRMS** Zoning Board Order No. 2022-1-03, and **DENIES** the  
6 relief sought in ANAKS’s Petition for Judicial Review.

## 7 II. STATEMENT OF FACTS

8 Because ANAKS’s claims for judicial review involve, *inter alia*, the Zoning  
9 Board’s alleged failure to afford it due process and alleged failure, entirely, to consider the  
10 crucial aspect of compatibility under Saipan Zoning Law § 702, the Court finds it necessary  
11 to outline the proceedings and submissions below in some detail.

### 12 A. AK’s Project, ANAKS, and the Surrounding Area

13 On December 17, 2021, AK filed an application for a conditional use permit for the  
14 development of a Toyota Lexus car dealership and vehicle repair facility on Lot EA 896-  
15 R1 in Puerto Rico, Saipan (the “Property”). Ex. 5, 8.<sup>1</sup> The Property sits in a **Mixed**  
16 **Commercial**<sup>2</sup> district pursuant to the Amended Saipan Zoning Law of 2013 (“SZL”). Ex.  
17 7-002. Adjacent to the Property is ANAKS, a gated residential community comprising 131  
18 residential units that house approximately 170 residents. Pet. ¶ 4. ANAKS is situated on a  
19 bluff approximately 18 to 23 feet above the Property. Ex. 8-046. The ANAKS property is  
20 also zoned as **Mixed Commercial**. Pet. ¶ 12.

21 The surrounding zoning districts are Public Resource, Industrial, and Rural. Ex. 7-  
22 004. Immediately to the south of ANAKS and the Property is one of the largest office  
23 complexes on Saipan, containing numerous federal government offices. AK’s Opposition  
24 to Petitioner’s Motion to Stay (filed May 16, 2023) at 13 fn.4. Directly across the road is  
25

---

26 <sup>1</sup> All references to exhibits refer to exhibits in the Certified Record. *See* Certification of Record and Exhibits  
27 1-29 (filed August 31, 2023); Stipulation to Add Documents to the Certified Record and Exhibits 30-34 (filed  
September 14, 2023).

28 <sup>2</sup> “This district provides for a broad spectrum of commercial development that requires a moderate to high  
level of vehicular access and for low to moderate density residential development.” SZL § 507(a).

1 the U.S. Army Reserve Center, where military firearms, explosives, armament, heavy  
2 equipment, and ammunition are regularly stored and used for training troops. *Id.* Further  
3 west sits the former municipal dump, which was converted into Eloy S. Inos Peace Park in  
4 2017. *Id.* Directly north of that is a tank farm, which stores and ships almost all of the  
5 petrochemicals used on Saipan. *Id.* To the east of the former dump are numerous storage  
6 yards and heavy equipment and construction supply staging areas. *Id.* And just north of  
7 the Property is a CUC power plant. *Id.*

8 AK's project can be broken down into two parts: (i) the **car dealership** portion and  
9 (ii) the **vehicle repair** portion. Under the SZL, the entire proposed development falls  
10 under the category of "Retail Sales and Services," with the car dealership portion falling  
11 under the subcategory of "Automobile Sales and Services" and the vehicle repair portion  
12 falling under the subcategory of "Vehicle Repair, General." SZL § 404, Table 1. In a  
13 Mixed Commercial district, such as the one ANAKS and the Property are in, automobile  
14 sales and services are a permitted use (i.e., allowed as of right) and require no special  
15 permits. *Id.* Accordingly, AK did not need to apply for a conditional use permit for the car  
16 dealership portion of its project. General vehicle repair, however, is only conditionally  
17 allowed in Mixed Commercial districts and requires obtaining a conditional use permit.<sup>3</sup>  
18 *Id.*

#### 19 **B. AK's Application for a Conditional Use Permit**

20 On December 17, 2021, AK applied for a conditional use permit for the vehicle  
21 repair portion of its project, which would include 27 vehicle service bays – including two  
22 commercial bays for school buses and other commercial vehicles – and a dedicated area for  
23 paint and body work. Ex. 5, 8.

24 Among other things, AK's initial application for a conditional use permit addresses  
25 the project's compatibility with the surrounding area, mitigation of adverse environmental  
26 impacts, and the public health, safety, and welfare. *See generally* Ex. 8.

---

27  
28 <sup>3</sup> General vehicle repair is only a permitted use (i.e., allowed as of right) in Industrial zones. SZL § 404, Table 1.

1 As to land use compatibility generally, the application states: “Although the  
2 proposed development is in a mixed commercial area, the site is located in very close  
3 proximity to one of the two largest areas permitted for industrial use. The close proximity  
4 from the site to the seaport provides a more direct access for the transport of shipped  
5 vehicles to the dealership. As a result, travel time, traffic congestion due to transporting of  
6 vehicles, and fuel consumption is reduced.” Ex. 8-005.

7 With regard to ANAKS specifically, the application states: “During the design  
8 process, it was important to avoid obstruction of the viewpoint from the Anaks property. A  
9 cross section of the site development plan shows the building height in relation to the  
10 surrounding elevations. A 15-foot buffer is provided along the rear of the property adjacent  
11 to the Anaks subdivision complex and retaining walls are provided where necessary.” Ex.  
12 8-004.

13 Under a section titled “General Requirements for Conditional Use,” the application  
14 also addresses:

- 15 • “Protection of Surrounding Properties and Adjoining Zoning Districts” (discussing  
16 providing buffers such as retaining walls to protect adjacent properties like  
17 ANAKS);
- 18 • “Public Facilities” (discussing adequacy of public water, sewer, power, and traffic  
19 facilities to support the proposed development);
- 20 • “Traffic Congestion” (discussing traffic study being conducted to determine  
21 whether the proposed development requires any modifications or improvements);
- 22 • “Health, Safety, Welfare” (discussing retention of licensed professionals to ensure  
23 compliance with health and safety codes and capacity of the proposed development  
24 to withstand wind, seismic, flooding, and fire events); and
- 25 • “Environmental Mitigation Measures” (discussing mitigation of pollution,  
26 stormwater runoff, erosion, noise, dust, waste, spills, and hazardous materials).

25 Ex. 8-005 – 8-008.

### 26 **C. The Zoning Administrator’s Memo**

27 On January 12, 2022, the Zoning Administrator prepared a memorandum evaluating  
28 AK’s conditional use application and proposed development “for compliance with the

1 Amended 2013 Saipan Zoning Law” (“Administrator’s Memo”). Ex. 7-001. Included in  
2 the Administrator’s Memo is an analysis of the project’s compliance with SZL § 702  
3 (entitled “General Requirements for All Conditional Uses”), which requires that all  
4 conditional uses “be compatible with the existing or allowable uses of adjacent properties  
5 and surrounding neighborhood” and that they “adequately avoid or mitigate unacceptable  
6 significant adverse impacts” to the environment, including noise, air, traffic, and other  
7 factors. Ex. 7-004 – 7-005; *see also* SZL §§ 702(a)-(h).

8 With regard to SZL § 702(b) specifically, which requires that all conditional uses  
9 “be compatible with the existing or allowable uses of adjacent properties and surrounding  
10 neighborhood,” the Administrator’s Memo states: “The proposed development is  
11 compatible with existing developments adjoining the property; Uses in the adjacent  
12 properties include Single-Family Dwellings, Commercial Businesses and parks. The  
13 surrounding zoning district are public resource, industrial and rural.” Ex. 7-004.

14 The Administrator’s Memo concludes: “The Zoning staff has concluded their  
15 review of the proposed use for the conditional use permit submitted by [AK] and finds it  
16 acceptable to the Amended Saipan Zoning Law of 2013. Should the Zoning Board approve  
17 the Conditional Use application for [AK], the Zoning staff recommends the following  
18 conditions . . .” Ex. 7-006. The Administrator’s Memo then lists 17 suggested conditions  
19 relating to noise level, odor, light, dust, trash, waste, debris, fencing, landscaping, parking,  
20 traffic flow, signage, and compliance with the requirements of all other local and federal  
21 regulatory agencies and tax laws. Ex. 7-006 – 7-007.

22 **D. The January 19, 2022 Zoning Board Meeting**

23 On January 19, 2022, the Zoning Board held a public meeting to discuss and  
24 evaluate, *inter alia*, AK’s conditional use application. Ex. 18, 19. At the meeting, the  
25 consultant for AK’s project, Sonya Pangelinan Dancoe, gave an overview of the project  
26 and the surrounding land uses and discussed AK’s efforts to work with other agencies such  
27 as the Division of Fish and Wildlife (“DFW”) and the Bureau of Environmental Quality  
28 (“BECQ”) to mitigate environmental concerns. Ex. 18-018 – 18-019. The designer of the

1 project, Neil Paynter, discussed the building design, landscaping buffers, setbacks, and  
2 height. Ex. 18-019 – 18-022. He also discussed AK’s plans to mitigate any possible  
3 environmental concerns, compliance with Environmental Protection Agency (“EPA”)  
4 regulations, and what AK planned to present to the Division of Environmental Quality  
5 (“DEQ”). Ex. 18-023 – 18-027.

6 Several ANAKS residents, including its President Larry Lee, were present at the  
7 January 19 meeting to share their concerns about the proposed project and to request  
8 additional time to review and respond to AK’s application. Ex. 18-046 – 18-064; 19-005.  
9 The ANAKS residents shared their concerns that hazardous waste produced by AK’s  
10 project might poison their groundwater wells; that the chemicals used by the repair facility  
11 would be carcinogenic and generate environmental pollution; that the buffer zone would  
12 not be sufficient to protect residents from the additional noise generated by the repair  
13 facility; that AK’s project would lead to increased traffic and decreased property value; and  
14 that a vehicle repair facility generally does not belong next to a residential community. Ex.  
15 18-046 – 18-064.

16 After hearing all the testimony, the Zoning Board Chairman asked AK to respond to  
17 some of the ANAKS residents’ concerns and paused the session to get advice from legal  
18 counsel on “the matter of Section 702 and the legal parameters around that particular  
19 subject.” Ex. 18-072. The Chairman acknowledged that “we’re trying to address Section  
20 702, the Zoning Law which is basically how does the project affect public health, safety,  
21 and welfare of the surrounding[s]. So, [that’s] the reason why for all these questions. Yes,  
22 we are not CRM or DEQ . . . but it is a surrounding neighborhood . . . and it’s really  
23 necessary to consider those conditions.” Ex. 18-037.

24 The Board then voted to table the decision “until [AK] can provide the Zoning  
25 Office and the Board a traffic study and any additional information that addresses the  
26 public comments that were shared today.” Ex. 18-075. The Chairman then thanked the  
27 public and confirmed that “[a]ll the concerns were heard from both the developer as well as  
28 the public” and that the Board wanted “as much information” as it could get to “make a

1 sound decision” in consideration of “how everybody [] is impacted, both the developer side  
2 as well as the resident side.” Ex. 18-076.

3 **E. AK’s Supplemental Report Concerning SZL § 702**

4 On February 23, 2022, AK supplemented its initial application with a 28-page  
5 (inclusive of appendices) “Follow Up Response to [the January 19] Public Hearing”  
6 addressing “[the January 19] public hearing testimony within the context of Article 7,  
7 Section 702, (a) through (h) of the Amended Saipan Zoning Law of 2013.” Ex. 8-043.

8 The report discusses how AK’s project meets each of the eight requirements of  
9 § 702, including the project’s compatibility with existing or allowable uses of adjacent  
10 properties and AK’s efforts to avoid or mitigate adverse environmental impacts<sup>4</sup> and take  
11 into consideration the public health, safety, and welfare<sup>5</sup>. The report includes the following  
12 five appendices: (1) Noise Study Report Considerations; (2) Hazardous Air Pollution  
13 Mitigation Considerations; (3) Storm Water Management and Oil - Water Separator; (4)  
14 Vehicular Traffic Analysis Report; and (5) Viewshed Analysis. Ex. 8-053 – 8-069.

15 With regard to SZL § 702(b) specifically, which requires that all conditional uses  
16 “be compatible with the existing or allowable uses of adjacent properties and surrounding  
17 neighborhood,” the report states: “[A]lthough the Property is zoned Mixed Commercial, it  
18 is across from one of the two largest industrial areas on Saipan and very near to another  
19 Industrial zoned property on the same side of Chalan Pale Arnold. Consequently, all  
20 surrounding properties are zoned either mixed commercial or industrial land uses and,  
21 therefore, generally compatible, except for Anaks Condominiums. However, Anaks  
22 Condominiums are situated on a bluff, approximately 18' to 23' above the Property. The  
23 Project’s design capitalizes on that difference in elevation to mitigate view shed and other  
24 issues.” Ex. 8-046.

---

25  
26 <sup>4</sup> Ex. 8-046 – 8-049 (discussing noise mitigation measures, site lighting mitigation measures, hazardous air  
27 pollution mitigation measures), 8-050 – 8-052 (suggesting conditions of approval relating to traffic  
28 congestion, spill prevention, noise mitigation, light pollution mitigation, storm water disposal and oil-water  
separation process, viewshed protection, etc.).

<sup>5</sup> Ex. 8-050 – 8-051 (discussing the remote possibility of contaminating nearby water wells).

1           **F. The March 9, 2022 Zoning Board Meeting**

2           On March 9, 2022, the Zoning Board held a second public meeting to, *inter alia*,  
3 continue discussing and evaluating AK’s conditional use application. Ex. 21, 22. ANAKS  
4 President Larry Lee, attorney Matthew Gregory, and several residents were present at the  
5 meeting. *Id.* At the meeting, the designer of AK’s project, Neil Paynter, presented on  
6 AK’s supplemental report and additional studies. Ex. 21-008 – 21-013; 22-003 – 22-005.

7           The Zoning Administrator informed the Zoning Board that she received a call from  
8 Attorney Kathryn Fuller, who had just been retained by ANAKS, requesting additional  
9 time to review the supplemental report and appendices submitted by AK. Ex. 21-009. The  
10 Zoning Administrator also read into the record Ms. Fuller’s letter to the Zoning Board, in  
11 which she requests a formal contested case hearing and an additional 60 days before the  
12 Board makes its decision on AK’s application. Ex. 21-013 – 21-019.

13           The Zoning Board decided to table the decision once more until March 18, 2022 for  
14 a special hearing to allow ANAKS additional time to review and respond to AK’s  
15 materials. Ex. 21-023 – 21-025.

16           **G. ANAKS’s and AK’s Additional Submissions to the Zoning Board**

17           AK and ANAKS made multiple submissions to the Zoning Board in advance of the  
18 March 18 special meeting.

19           On March 17, 2022, in response to additional concerns raised at the March 9  
20 meeting, AK supplemented its February 23 report regarding the requirements of SZL § 702  
21 with two letters. Ex. 8-074 – 8-076; 8-078 – 8-107. These letters specifically address  
22 ANAKS’s viewshed and lighting concerns as well as stormwater, oil, fuel, and gas  
23 management. *Id.*

24           Also on March 17, 2022, ANAKS submitted a 22-page “Memorandum of Points  
25 and Authorities in Opposition to [AK’s] Conditional Use Application,” in which ANAKS  
26 “outline[s] the potential substantial impacts to [the ANAKS property] and tr[ies] to  
27 highlight the proposed Facility’s essential incompatibility under the SZL.” Ex. 24-005.



1 The memorandum points out several perceived flaws with AK’s initial application and its  
2 “Follow Up Response to [the January 19] Public Hearing.” *Id.*

3 ANAKS concurrently submitted a 9-page Technical Memorandum from GHD  
4 rebutting the points raised in AK’s application as to SZL § 702. Ex. 30-001 – 30-009. The  
5 Technical Memorandum concludes: “[W]e believe issuing a decision on the permit  
6 application would be premature at this time.” Ex. 30-009.

7 On March 18, 2022, ahead of the special meeting, AK submitted an 11-page  
8 response to ANAKS’s Memorandum of Points and Authorities, reiterating the project’s  
9 compatibility with SZL § 702 and rebutting what it perceived to be “gross generalizations  
10 and misstatements of [] the Zoning Board’s obligations” by ANAKS. Ex. 26-008. AK’s  
11 response concludes, “Atkins Kroll respectfully requests that the Zoning Board apply the  
12 standards in the Saipan Zoning Law, particularly those set forth in Section 702, and grant  
13 AK’s Conditional Use Permit Application at the meeting tonight.” Ex. 26-011.

14 On March 18, 2022, ANAKS’s counsel Kathryn Fuller also submitted proposed  
15 conditions to be incorporated into AK’s conditional use permit should it be approved. Ex.  
16 32. AK submitted a response to ANAKS’s proposed conditions, accepting some and  
17 suggesting changes to others. Ex. 33, 34.

#### 18 **H. The March 18, 2022 Special Meeting and Approval of AK’s Application**

19 On the evening of March 18, 2022, the Zoning Board held a special meeting to  
20 further discuss and decide on AK’s application for a conditional use permit. Ex. 20, 23.  
21 Several members of the ANAKS community were present, including its President Larry  
22 Lee and counsel Matthew Gregory, who reiterated their concerns about the inherent  
23 incompatibility of the project and asked that AK’s application be denied or that the  
24 decision be delayed further to give ANAKS more time to oppose the project. *Id.*

25 Mr. Lee stated to the Zoning Board, “I think you guys have enough information to  
26 make your decision and it comes down to one deciding factor, in my mind, and this is  
27 straight from the Saipan Zoning Law of 2013, Section 702(b), right?” Ex. 20-020. Mr.  
28 Gregory appeared to agree that “the Board does have much more information in front of

1 them today to make a decision” but maintained that AK had nevertheless failed to prove  
2 that its project is compatible with the existing ANAKS community. Ex. 20-014.

3 Following public comments, the Chairman of the Zoning Board stated that he and  
4 the Zoning Board had reviewed the comprehensive plan and studies “in depth[.]” Ex. 20-  
5 026. He stated that he was as yet undecided and that he was “looking at all the facts and  
6 prospects,” including studies relating to the noise impact of wrenches and generators, the  
7 type of paint booth that would be used, the type of filtration system that would be used, and  
8 the type of insulation that would be used for noise reduction. Ex. 20-027. The Chairman  
9 and Vice Chairman then asked AK to address their concerns about noise generated by the  
10 project and air pollution caused by the paint booths. Ex. 20-028 – 20-029.

11 Rob Jordan, a certified industrial hygienist hired by AK to collect data regarding  
12 sound and air quality, explained federal and local regulations regarding paint booth  
13 operations and AK’s plan to use a “control strapped paint booth . . . provisioned with very  
14 high-end efficient scrubbers or filters” that he was confident would “comply[] with all the  
15 regulations.” Ex. 20-029 – 20-032. Neil Paynter, AK’s project designer, explained that the  
16 building would be fully enclosed within concrete walls to mitigate noise and, further, that  
17 AK would attempt to “isolate [equipment] from the ground, so that noise doesn’t transfer  
18 through to structure to the exterior.” Ex. 20-036 – 20-037.

19 The Chairman called for a recess. Ex. 20-037. Upon reconvening, the Zoning  
20 Board Secretary thanked everybody for their participation and noted that “we have  
21 reviewed documents forwarded to us from both stakeholders and landowners.” Ex. 20-038.  
22 The Zoning Board proceeded with the vote and unanimously voted to approve AK’s  
23 application subject to 19 conditions. Ex. 20-041 – 20-043.

24 **I. AK’s Conditional Use Permit and Zoning Board Order No. 2022-1-03**

25 On April 13, 2022, the Zoning Office issued Conditional Use Permit No. 2020-  
26 10382 (the “CUP”) to AK. Ex. 25. The CUP describes the project, attaches the Zoning  
27 Administrator’s memo, and imposes the following 19 conditions previously discussed at  
28 the March 18 special meeting:

- 1 1. Applicant shall comply with the requirements from all other local and federal  
2 regulatory agencies having jurisdiction over this project.
- 3 2. Applicant shall employ proper measures to control the noise level from reaching  
4 unacceptable levels beyond its property lines.
- 5 3. Applicant shall ensure that its operation does not generate noise, odor, light and  
6 dust that will affect the neighborhood.
- 7 4. There shall be no parking of heavy equipment[] or vehicles on the public streets or  
8 Right-of-Way areas at any given time.
- 9 5. Applicant shall apply for a Zoning Temporary Use Permit from the Zoning Office  
10 prior to installing a safety perimeter fence to screen construction activities.
- 11 6. Applicant shall only develop the site in accordance with the plans submitted to and  
12 approved by the Zoning Board. Changes to development requires the applicant to  
13 obtain an amended Conditional Use permit.
- 14 7. Applicant shall improve its parking area and designate clearly marked parking stalls  
15 in front of its establishment which conforms to parking requirements of the  
16 Amended Saipan Zoning Law 2013, within 10 days after obtaining an approved  
17 Occupancy Permit Clearance from the Department of Public Works.
- 18 8. Applicant shall clearly mark its entrance/exit signs and employ traffic directional  
19 markers for safe travel flow.
- 20 9. Applicant shall keep it premise and immediate surrounding areas clean and free  
21 from trash, waste, debris, solid waste, or dilapidated junk vehicles and shall screen  
22 any trash bins from public view.
- 23 10. Applicant shall employ Type B landscaping on the front of its establishment  
24 fronting the Right of Ways for visual and aesthetic purposes.
- 25 11. Applicant shall landscape the site in accordance to the landscaping plans submitted  
26 to and approved by the Zoning Board.
- 27 12. Applicant shall comply with all CNMI Business Tax Laws.
- 28 13. Applicant shall submit an approved BECQ-DEQ layout of its waste management  
systems.
14. Applicant shall apply for a Zoning Minor Site Plan and complete the permitting  
process before installing any perimeter fencing.
15. The applicant shall apply for a Zoning Sign Permit and complete the permitting  
process before installing or constructing any business advertisement signages.
16. Applicant shall remove all property postings Three (3) days after the public hearing.
17. The applicant shall reduce the Commercial Bay Structure to 42 feet.

1 18. The applicant shall maintain decibel levels as reported and submitted to the Zoning  
Office, within its property lines.

2 19. If any of the approved conditions are not followed, the applicant shall have its  
3 Conditional Use Permit Revoked, plus a \$1,000.00 fine per day of noncompliance.

4 Ex. 25-002 – 25-003.

5 On April 21, 2022, the Zoning Office issued Zoning Board Order No. 2022-1-03  
6 (“TITLE: To Approve Conditional Use Atkins Kroll Saipan Inc. – File No. 2020-10382”).

7 Ex. 10.

8 **J. ANAKS’s Petition for Judicial Review and the Court’s Denial of a Stay**

9 On May 13, 2022, ANAKS filed its petition seeking judicial review of the Zoning  
10 Board’s decision to approve AK’s CUP application (the “Petition”). The Petition requests,  
11 *inter alia*, that “the Court issue a preliminary injunction prohibiting construction on Lot EA  
12 496-R1 under Conditional Use Permit 2020-10382 until the conclusion of this action” and  
13 revocation of the CUP, or in the alternative, that the matter be remanded to the Zoning  
14 Board for further proceedings in compliance with its statutory obligations. Pet. at 24.

15 On May 5, 2023, ANAKS filed a Motion for Stay of Agency Action Pursuant to  
16 NMI R. P. Admin. App. 3 and 1 CMC § 9112. After full briefing and oral arguments, the  
17 Court issued an order denying ANAKS’s motion on the basis that “ANAKS ha[d] not met  
18 its burden of showing a combination of probable success on the merits and the possibility  
19 of irreparable injury.” *See* Order Denying Motion for Stay of Agency Action (filed July 7,  
20 2023).

21 **III. LEGAL STANDARD**

22 The Administrative Procedure Act provides that “[t]o the extent necessary to  
23 decision and when presented, the reviewing court shall decide all relevant questions of law,  
24 interpret constitutional and statutory provisions, and determine the meaning or applicability  
25 of the terms of an agency action.” 1 CMC § 9112(f). Among its power of judicial review,  
26 the reviewing court may (1) compel agency action unlawfully withheld or unreasonably  
27 delayed and (2) hold unlawful and set aside agency action, findings, and conclusions found  
28 to be:

- 1 (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
with law;
- 2 (ii) Contrary to constitutional right, power, privilege, or immunity;
- 3 (iii) In excess of statutory jurisdiction, authority or limitations, or short of statutory  
4 right;
- 5 (iv) Without observance of procedures required by law;
- 6 (v) Unsupported by substantial evidence in a case subject to 1 CMC §§ 9108 and  
7 9109 or otherwise reviewed on the record of an agency hearing provided by  
statute; or
- 8 (vi) Unwarranted by the facts to the extent the facts are subject to trial de novo by  
9 the reviewing court. *Id.*

10 The court reviews questions of law de novo. *RNV Constr. v. GPPC, Inc.*, 2021 MP  
11 13 ¶ 9.

#### 12 IV. DISCUSSION

##### 13 **A. The Law-of-the-Case Doctrine Is Inapplicable With Regard to This Court's** 14 **Prior Ruling on ANAKS's Motion for Stay.**

15 AK and the Zoning Board invoke the law-of-the-case doctrine to argue that (i) the  
16 Court's July 7, 2023 Order Denying Motion for Stay of Agency Action conclusively  
17 resolved several claims in ANAKS's Petition and that (ii) therefore the parties are now  
18 bound by the Court's prior ruling. AK's Resp. Br. at 7-8; ZB's Resp. Br. at 7-8. ANAKS  
19 takes the position that the law-of-the-case doctrine is inapplicable at this stage in the  
20 proceedings because "the Superior Court's denial of a stay is not a binding decision" and  
21 there has been "no decision from the [NMI] Supreme Court on any of the issues" related to  
22 the merits of ANAKS's Petition. ANAKS's Reply Br. at 3-5. The Court agrees with  
23 ANAKS.

24 Under the law-of-the-case doctrine, "courts are generally required to follow legal  
25 decisions of the same or a higher court in the same case." *Commonwealth v. Taitano*, 2017  
26 MP 19 ¶ 19. The guiding principle behind the doctrine is one of finality. *Id.* It is designed  
27 "to maintain consistency and avoid reconsideration of matters once decided during the  
28 course of a single continuing lawsuit." *Cushnie v. Arriola*, 2000 MP 7 ¶ 14; *Sherley v.*

1 *Sebelius*, 689 F.3d 776, 780 (purpose of law-of-the-case doctrine is to ensure that “the *same*  
2 issue presented a second time in the *same case* in the *same court* should lead to the *same*  
3 *result*.”). However, where a preliminary motion is involved – such as a motion for a stay  
4 of the case or for a preliminary injunction – the decision of a trial or appellate court  
5 whether to grant or deny the motion “does not constitute law of the case for the purpose of  
6 further proceedings and does not limit or preclude the parties from litigating the merits.”  
7 *See Berrigan v. Sigler*, 499 F.2d 514, 518 (D.C. Cir. 1974).

8 This exception to the law-of-the-case doctrine primarily arises from two  
9 considerations. First, preliminary motions are often decided without the benefit of  
10 “discovery or . . . a fully developed record and often on briefing and argument abbreviated  
11 or eliminated by time considerations,” and therefore a court “in a later phase of the  
12 litigation with a fully developed record . . . and fully developed consideration of the issue  
13 need not bind itself to the time-pressured decision it made earlier on a less adequate  
14 record.” *Sebelius*, 689 F.3d at 782. Second, the law-of-the-case doctrine only applies  
15 where a court has “affirmatively decided” an issue, and to the extent a court “predicts,  
16 without making a definitive legal conclusion, that the plaintiffs *probably* or *likely* will or  
17 will not succeed on the merits, it cannot be said that the court ‘affirmatively decided’ the  
18 issue” such that it would bind the court at a later stage of the litigation. *Id.* (emphasis in  
19 original).

20 The Court’s Order Denying ANAKS’s Motion for Stay of Agency action was  
21 decided on a less-than-full record and was subject to time constraints that are no longer at  
22 issue at this stage in the proceedings. Since the Court’s July 7, 2023 Order, the parties  
23 have had the chance to submit a complete certified record, including transcripts of the  
24 Zoning Board hearings that were previously unavailable. Having a full record of the entire  
25 proceedings below is particularly important in the context of judicial review of an agency  
26 decision. *See* 1 CMC § 9112 (“In making the foregoing determination, the court **shall**  
27 review the whole record . . .”). Moreover, although the Court’s earlier decision to deny  
28 ANAKS’s request for a stay undoubtedly touched upon the Court’s opinion of ANAKS’s

1 *probability or likelihood* of success on the merits, based on the record the Court had before  
2 it at that juncture, it was by no means a definitive decision on the merits.

3 For these reasons, the Court finds the law-of-the-case doctrine inapplicable and will  
4 proceed with its decision on the merits of ANAKS’s Petition based on the full certified  
5 record now before it.

6 **B. The Zoning Board’s Decision Was Made Pursuant to Procedures Required by**  
7 **Law and ANAKS Was Given Notice and an Opportunity to Be Heard.**

8 “The concept of procedural due process implies that official action must meet a  
9 minimum standard of fairness to the individual, conferring the right, for example, to  
10 adequate notice and a meaningful opportunity to be heard.” *Office of the Attorney Gen. v.*  
11 *Honrado*, 5 NMI ¶ 10 (1996). “The formality and procedural requisites for the hearing can  
12 vary, depending upon the importance of the interests involved and the nature of the  
13 subsequent proceedings.” *Boddie v. Connecticut*, 401 U.S. 371, 378 (1977). Ultimately,  
14 “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a  
15 meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333  
16 (1976).

17 The parties’ dispute centers on what process was due to ANAKS prior to, and  
18 leading up to, the Zoning Board’s decision to grant AK’s application for a conditional use  
19 permit. ANAKS believes that the Zoning Board’s hearing process was severely deficient  
20 and denied it notice and an opportunity to be heard under SZL § 1403(a), violated 1 CMC  
21 § 9109 of the APA, and deprived it of due process under NMI Const. art. 1 § 5. ANAKS’s  
22 Op. Br. at 14. Specifically, ANAKS argues that it was entitled to: (1) actual individualized  
23 notice of the March 9, 2022 hearing, (2) 14 days’ notice of the March 18, 2022 hearing, and  
24 (3) a plenary contested case hearing governed by the procedures outlined in 1 CMC § 9109  
25 of the APA. *Id.* at 14-21.

26 The Court – now with the benefit of the entire certified record before it, including  
27 the transcripts of the January 19, March 9, and March 18 Zoning Board meetings – is  
28

1 satisfied that ANAKS was afforded “adequate notice and a meaningful opportunity to be  
2 heard” during the Zoning Board’s hearing process.

3 **1. ANAKS Received Adequate Notice of the March 9, 2022 Meeting**  
4 **According to Procedures Required By Law.**

5 ANAKS takes issue with the fact that it did not receive “actual notice of the  
6 continuation of the hearing [on AK’s application]” from January 19 to March 9 and instead  
7 “it was left to ANAKS’s counsel . . . to find a notice published on the Zoning Board’s  
8 website on March 7, 2022, regarding the meeting on March 9, 2022.” ANAKS’s Op. Br. at  
9 15. ANAKS believes that *Premier Ins. Co., Inc., v. Department of Labor*, 2012 MP 16,  
10 unambiguously stands for the notion that notice by publication violates a plaintiff’s due  
11 process where it was possible to give that plaintiff direct and individualized notice instead.  
12 ANAKS’s Op. Br. at 15-16. Because the “violation of a fundamental constitutional right is  
13 not ‘harmless error,’” ANAKS argues, the Zoning Board’s decision must be vacated  
14 regardless of whether ANAKS can demonstrate prejudice – which it cannot because  
15 ANAKS did, in fact, receive notice of the March 9 meeting and did, in fact, attend and  
16 testify extensively at the meeting, as the record clearly shows. *See* Ex. 21, 22.

17 The Court first looks to the Saipan Zoning Law for guidance as to what notice  
18 procedure was required. Section 1404(a) of the SZL provides:

19 When notice is required . . . Notice shall be given in a way, or ways,  
20 calculated to provide actual, cost-effective notice, including by electronic  
21 means, posting, newspaper publication, or by personal delivery. ***The Board***  
22 ***shall by regulation determine the notice required for each type of***  
23 ***application, approval, or petition.***

24 SZL § 1404(a) (emphasis added). ANAKS fixates on the portion of § 1404(a) that states  
25 “electronic means” can provide “actual, cost-effective notice” but disregards entirely the  
26 fact that “newspaper publication” is listed as another way by which “actual, cost-effective  
27 notice” can be given. *See id.*

28 ANAKS also fails to acknowledge that the Zoning Board did, in fact, adopt notice  
regulations. Section 165-30.1-101(c) of the Zoning Board Regulations provides:



1 Meetings shall be publicly noticed as required by law. **Ordinarily such**  
2 **notice shall be by publication** in at least one newspaper of local circulation  
3 at least one time each week for two weeks prior to a meeting . . .

4 NMIAC § 165-30.1-101(c).

5 The record demonstrates that the Zoning Office complied with all legal  
6 requirements regarding notice in advance of the March 9 meeting. As an initial matter,  
7 ANAKS was present at the January 19 public meeting when the Zoning Board decided –  
8 upon ANAKS’s own request – to delay its decision on AK’s application to allow ANAKS  
9 more time to review AK’s submissions and prepare a rebuttal. Ex. 21, 22. ANAKS  
10 therefore had notice that day that a follow-up meeting would be scheduled. The Zoning  
11 Office then published notice of the March 9 meeting on its website, at executive branch  
12 buildings, and in local newspapers on February 25, 2022 and March 2, 2022, in accordance  
13 with SZL § 1404(a) and NMIAC § 165-30.1-101(c). Ex. 12, 15. ANAKS then actually  
14 showed up and participated in the March 9 meeting because its attorney, Kathryn Fuller,  
15 saw the notice published on the Zoning Board’s website.

16 ANAKS contends that it was in direct contact with the Zoning Office during this  
17 time and thus the Zoning Office should have directly notified it of the March 9 meeting  
18 instead of relying on notice by publication. ANAKS’s Op. Br. at 15. ANAKS argues that  
19 the Zoning Office’s failure to do so constitutes a violation of the SZL and ANAKS’s due  
20 process rights. *Id.* However, ANAKS cites to no rule or law requiring the Zoning Board to  
21 provide individualized notice to interested persons. Instead, it relies on *Premier Ins. Co.,*  
22 *Inc., v. Department of Labor*, 2012 MP 16, for the proposition that “notice by publication  
23 does not replace actual notice where it is possible to give actual notice with reasonable  
24 diligence.” *Id.* The Court does not agree that *Premier* intended to carve out such a bright-

25 line rule.  
26 ANAKS’s reading of *Premier* is overly broad and fails to acknowledge that the  
27 *Premier* court limited its holding to the specific facts of that case. *Premier*, 2012 MP 16  
28 ¶ 12 (“We do not find notice by publication ‘reasonable notice’ **under the circumstances**  
**of this case. . . . On the facts of this case**, we agree.”) (emphasis added). In *Premier*, the

1 Department of Labor (“DOL”), in response to labor claims filed by its employees, sent  
2 direct notice to an interested party regarding those claims in 2004. *Id.* ¶ 2. In 2007 – three  
3 years after the first notice – DOL finally scheduled hearings on the claims and published  
4 notice of the hearings in a newspaper twice. *Id.* The interested party did not find out about  
5 the hearings until *after* they had occurred and a decision was made. *Id.* ¶ 9. The *Premier*  
6 court held that DOL had violated the interested party’s right to due process, and, in doing  
7 so, it specifically cited to the “long lag between the 2004 Notice and the 2007 Notice” and  
8 the fact that it would be “unreasonable to require [the interested party] to check the  
9 newspaper *every day for three years* to determine the date of the hearing[.]” *Id.* ¶¶ 5, 11-  
10 12 (emphasis added).

11 Here, the unique circumstances that rendered DOL’s notice by publication  
12 inadequate are not present. Unlike in *Premier*, where three years had lapsed between  
13 DOL’s first and second notices, here a little over one and a half months had passed between  
14 the initial January 19 meeting and the date ANAKS’s counsel saw notice of the March 9  
15 meeting published on the Zoning Board’s website. One and a half months is not an  
16 unreasonable amount of time to check a newspaper, website, or bulletin board on a regular  
17 basis, especially considering that ANAKS (i) was present at the previous meeting, (ii) had  
18 itself made the request that the decision be moved to a later date, and therefore (iii) was on  
19 notice to look out for the next hearing date. And unlike in *Premier*, where the notice by  
20 publication failed to actually provide notice to the interested party – as evidenced by the  
21 party missing the hearing entirely – here ANAKS concedes that the notice by publication  
22 did, in fact, effectuate notice of the March 9 meeting and ANAKS did, in fact, attend and  
23 participate.

24 The *Premier* court also noted that DOL had initially sent “individualized notices” in  
25 2004, but in 2007 perplexingly chose to “simply post[] a notice of the hearing in a  
26 newspaper two times” instead. *Premier*, 2012 MP 16 ¶ 2. Here, with regard to AK’s  
27 conditional use application, the Zoning Office had never previously sent individualized  
28 notice of upcoming meetings to any designated ANAKS representative. The Zoning Office

1 was not even aware that ANAKS had retained an attorney to represent it in the proceedings  
2 on AK’s application until it received Kathryn Fuller’s letter on March 8, 2022 – a day  
3 before the March 9 meeting. Under these facts, the Zoning Office’s reliance on the  
4 ordinary notice procedures outlined in Section 165-30.1-101(c) of the Zoning Board  
5 Regulations was not unreasonable and does not rise to the level of a constitutional  
6 violation.

7 ANAKS can certainly make the argument that “it would have been simple to  
8 provide ANAKS with electronic notice,” and even better perhaps. ANAKS’s Reply Br. at  
9 10. However, “[t]he Due Process Clause does not require perfect procedures,” only  
10 sufficient procedures to safeguard the right to be heard at a meaningful time and in a  
11 meaningful manner. *See Kempke v. Kan. Dep’t of Revenue*, 281 Kan. 770, 776 (2006).  
12 The record shows that the procedures followed by the Zoning Office provided ANAKS  
13 with adequate notice and a meaningful opportunity to be heard at the March 9 meeting.

14 **2. ANAKS Received Adequate Notice of the March 18, 2022 Special**  
15 **Meeting According to Procedures Required By Law.**

16 ANAKS next takes issue with the fact that it was given only nine days’ notice of the  
17 special meeting scheduled for March 18 and insists that “[t]he notice period is 14 days for  
18 all forms of notice specified in the law, where the law provides a specific notice period.”  
19 ANAKS’s Op. Br. at 16 (citing SZL § 1404(d)-(h)). Citing to the fact that the required  
20 notice period for mailed notice and posted notice is 14 days, ANAKS reasons that “[t]he  
21 only possible interpretation of the [SZL § 1404] is that electronic notice, such as an email,  
22 would also need to be supplied 14 days before the public hearing.” *Id.*

23 The Court finds no support in the law for ANAKS’s assertion that it was  
24 constitutionally entitled to at least 14 days’ notice of the special meeting on March 18th.  
25 Section 1404 of the SZL is silent on the notice procedure required for special meetings.  
26 Rather, the procedure for special meetings is outlined in § 165-30.1-120(b) of the Zoning  
27 Board Regulations, which provides that “[s]pecial meetings . . . shall be duly noticed by the  
28 Board” in accordance with 1 CMC § 9911. In turn, 1 CMC § 9911 (“Special Meetings”)

1 requires “written notice . . . delivered personally or by mail at least 24 hours before the  
2 time of such meeting[.]” 1 CMC § 9911. These procedures were followed by the Zoning  
3 Board in advance of the March 18 hearing.

4 ANAKS points out that 1 CMC § 9911 speaks to “notice to each member of the  
5 governing body” and to media outlets, such as newspapers, without explicitly mentioning  
6 how interested parties or the general public should be dealt with. ANAKS’s Reply Br. at  
7 11. The implied suggestion, then, is that the default notice period for interested parties  
8 should always be 14 days in the absence of explicit instructions otherwise.

9 A basic tenet of statutory interpretation is that “[w]hen a statute is not clear . . . we  
10 look at the statute as a whole, not just an isolated set of words, to ascertain the legislature’s  
11 intent. *Aurelio v. Camacho*, 2012 MP 21 ¶ 15. We likewise avoid reading a statute in a  
12 way that “defies common sense or leads to absurd results.” *Id.* ANAKS’s reading of 1  
13 CMC § 9911 would necessarily mean that special meetings can never be called on an  
14 expedited basis and must always be scheduled a minimum of 14 days out to allow time for  
15 interested parties and members of the public to be notified. It would also necessarily mean  
16 that a presiding member of a governing body is required to give 14 days’ notice of a special  
17 meeting to interested parties and members of the public but, inexplicably, only 24 hours’  
18 notice to other members of the governing body. It also fails to account for why notice  
19 would need to be given to media outlets at all, but for the purpose of informing members of  
20 the public. ANAKS’s reading defies common sense and leads to absurd results.

21 Even if ANAKS’s reading of 1 CMC § 9911 were correct, ANAKS’s claim that it  
22 was prejudiced by the allegedly inadequate notice procedures is not supported by the  
23 record. The record shows that ANAKS (i) was present at the March 9 meeting when the  
24 Zoning Board’s decision was continued to March 18th, (ii) was itself the reason for the  
25 continuance,<sup>6</sup> (iii) received written notice of the March 18 special meeting on the spot at

---

26  
27 <sup>6</sup> ANAKS had asked for an additional 60 days from March 9 to prepare further rebuttal materials, but the  
28 Zoning Board denied the request as “unreasonable,” citing the fact that the Board had already granted  
ANAKS a 45-day extension. Ex. 21-021 – 21-023. The Board granted an additional nine days instead,  
reasoning that the Board typically has “less than a week” to review all the materials submitted to it. *Id.*

1 the March 9 meeting, (iv) made multiple submissions to the Zoning Board in advance of  
2 the March 18 special meeting, including a 22-page legal memorandum, a 9-page technical  
3 memorandum, and a letter with proposed conditions, and (v) attended and fully participated  
4 in the March 18 special meeting.

5 On these facts, the Court finds that ANAKS was afforded adequate notice and a  
6 meaningful opportunity to be heard at the March 18 special meeting.

7 **3. A Plenary Contested Case Hearing Pursuant to 1 CMC § 9109 Was**  
8 **Not Required on AK’s Application for a Conditional Use Permit.**

9 Despite ANAKS’s attendance and participation in the proceedings on AK’s  
10 conditional use application, which were continued multiple times at ANAKS’s request,  
11 ANAKS maintains that the Zoning Board’s failure to hold a plenary contested case hearing  
12 pursuant to 1 CMC § 9109 violated the SZL and APA and deprived it of due process.  
13 ANAKS’s Op. Br. at 17-21.

14 Plenary contested case hearings are governed by 1 CMC §§ 9108-10 of the APA,  
15 which supply the procedures that must be followed in the absence of agency-specific  
16 procedures. They are essentially mini trials held before an impartial hearing officer /  
17 administrative law judge and require the observance of formal procedures, such as: the  
18 administration of oaths, the ability to issue subpoenas, the right to call and cross-examine  
19 witnesses, the imposition of rules pertaining to *ex parte* communications, and the entry of  
20 formal findings of fact and conclusions of law. *See* 1 CMC §§ 9109-10.

21 ANAKS contends that it was entitled to the formal procedures outlined in §§ 9109  
22 and 9110 because it was an interested party to AK’s application, and pursuant to SZL  
23 § 1403(a), interested parties “shall be entitled to notice and an opportunity to be heard”  
24 when “a contested case hearing on an application is required.” SZL § 1403(a). ANAKS  
25 believes that a contested case hearing pursuant to §§ 9109 and 9110 was required in this  
26 case because ANAKS had requested one. ANAKS’s Op. Br. at 19.

27 However, nothing in the APA or SZL suggests that ANAKS, as an interested party,  
28 was entitled to demand a contested case hearing on AK’s application for a conditional use

1 permit. Section 9108(a) only requires the formal, trial-like procedures set forth in §§ 9108  
2 and 9110 “in every adjudication in which a sanction may be imposed.” 1 CMC § 9108(a).  
3 The NMI Supreme Court also recognized in *J.G. Sablan Rock Quarry, Inc. v. Dept. of*  
4 *Public Lands* that §§ 9109 and 9110 are “generally required in adjudications where a  
5 sanction may be imposed” and that “a different set of procedures must be followed when  
6 licenses<sup>7</sup> are at issue.” 2012 MP 2 ¶ 30.

7 The relevant procedure here is governed by SZL § 1308(c) (“Procedure for  
8 Conditional Use Permits”), which only requires “notice” and a “public hearing” before a  
9 decision on an application can be made:

10 An application for a conditional use permit shall be determined as follows:

- 11 (1) A public hearing preceded by notice shall be held within 42 days of  
12 the filing of a completed application. . . .
- 13 (2) The Board shall decide the application within 35 days after the close  
14 of the record. . . .

15 SZL § 1308(c). Section 1308 does not provide for the formal adjudicatory hearing sought  
16 by ANAKS, which makes sense considering that (i) the approval or denial of a conditional  
17 use permit application does not involve a sanction<sup>8</sup>, and (ii) requiring the Zoning Board to  
18 defer to a hearing officer’s findings runs contrary to each member’s independent voting  
19 obligations.<sup>9</sup>

22 <sup>7</sup> A permit is a type of license. *See* 1 CMC § 9101(f) (“License’ includes the whole or part of any agency,  
23 permit, certificate, approval, registration, charter, or similar form of permission required by law.”).

24 <sup>8</sup> A “sanction” is “[a] penalty or coercive measure that results from failure to comply with a law, rule, or  
25 order.” Black’s Law Dictionary (11th ed. 2019).

26 <sup>9</sup> Interestingly, the Legislature explicitly mandated Zoning to provide “the opportunity for a contested case  
27 hearing that comports with the requirements of the APA” in proceedings involving the “removal of  
28 unauthorized use or public nuisance and for suspensions, revocations and fines” – in other words, proceedings  
involving sanctions. SZL § 1409(c)(1). Section 1409’s explicit provision of “a contested case hearing that  
comports with the requirements of the APA” suggests that the absence of such provision in other sections of  
the SZL was intentional. *See Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) (“[I]t is a general  
principle of statutory construction that when Congress includes particular language in one section of a statute  
but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and  
purposely in the disparate inclusion or exclusion.”) (simplified).

1           Based on the foregoing, the Court finds that the Zoning Board’s denial of  
2 ANAKS’s request for a contested case hearing pursuant to §§ 9109 and 9110 was not in  
3 violation of the APA, the SZL, or ANAKS’s right to due process. To the contrary, as  
4 explained in Sections IV(B)(1)-(2), *supra*, the Zoning Board followed all procedures  
5 required by law, and ANAKS was afforded multiple opportunities to be heard “at a  
6 meaningful time and in a meaningful manner.” *See Eldridge*, 424 U.S. at 333.

7           **C. The Zoning Board’s Decision Was Not “Arbitrary and Capricious” and Was**  
8           **Supported by “Substantial Evidence.”**

9           **1. “Arbitrary and Capricious” Standard**

10           The NMI Supreme Court has made clear that under the Administrative Procedure  
11 Act, “[a]gency decisions are reviewed on the basis of an ‘arbitrary and capricious’  
12 standard.” *Pac. Sec. Alarm, Inc. v. Commonwealth Ports Auth.*, 2006 MP 17 ¶ 14 (citing  
13 *Wileman Bros. & Elliott, Inc. v. Espy*, 58 F.3d 1367, 1374 (9th Cir. 1995)); *see also* 1 CMC  
14 § 9112. Arbitrary and capricious action under 1 CMC § 9112 is not defined in the statute.  
15 However, arbitrary and capricious agency action has been defined in this jurisdiction as  
16 “willful and unreasonable action without consideration or in disregard of facts or without  
17 determining principle.” *In re Blankenship*, 3 N.M.I. 209, 217 (1992) (citing BLACK’S LAW  
18 DICTIONARY (5th ed. 1979)). Entirely failing to consider an important aspect of a claim will  
19 also render an agency action arbitrary and capricious. *Commonwealth Ports Auth.*, 2006  
20 MP 17 ¶ 14.

21           Under the Administrative Procedure Act, agency actions under review are “entitled  
22 to a presumption of regularity,” and reviewing courts must defer to agency decisions. *Id.*  
23 Therefore, “the scope of review under the ‘arbitrary and capricious’ standard is narrow and  
24 a court is not to substitute its judgment for that of the agency.” *Id.* ¶¶ 14-15 (citing *Motor*  
25 *Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). “A court  
26 simply ensures that the agency has acted within a zone of reasonableness and, in particular,  
27 has reasonably considered the relevant issues and reasonably explained the decision.” *Fed.*  
28 *Commc’ns Comm’n v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**2. “Substantial Evidence” Standard**

The substantial evidence standard is a “more exacting” standard of review than the deferential arbitrary and capricious standard. *See Limon v. Camacho*, 1996 MP 18 ¶ 20. In applying the substantial evidence standard, a court must uphold the agency decision if it appears “reasonable” after consideration of the facts in the record, even if the decision is supported by “something less than the weight of the evidence.” *In re Hafadai Beach Hotel Extension*, 4 N. Mar. I. 37, 44 (1993); *see also Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (“[W]hatever the meaning of ‘substantial’ in other contexts, the threshold for such evidentiary sufficiency is not high. Substantial evidence, this Court has said, is ‘more than a mere scintilla.’ . . . It means—and means only—‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’”). “The court should not supplant the agency’s findings merely by identifying alternative findings that could be supported by substantial evidence.” *Arkansas v. Oklahoma*, 503 U.S. 91, 113 (1992).

The substantial evidence standard is applicable in any case subject to 1 CMC §§ 9108 and 9109 “or otherwise reviewed on the record of an agency hearing provided by statute.” The Court determined in Section IV(B)(3), *supra*, that the proceedings before the Zoning Board on AK’s application were not subject to §§ 9108 and 9109. Nevertheless, to the extent that the public hearings held by the Zoning Board on AK’s application constitute “on the record . . . agency hearing[s] provided by statute,” *see* SZL § 1308(c), the Court finds that the Zoning Board’s decision to grant AK’s application was reasonable under both the substantial evidence standard (i.e., decision was “reasonable” and “adequate[ly]” supported after consideration of facts in the record) and the more deferential arbitrary and capricious standard (i.e., decision cannot be said to be “willful and unreasonable,” “in disregard of facts,” or “without determining principle”).

**3. The Record Shows That the Zoning Board Took Its Duties Seriously and Considered and Discussed SZL § 702 Extensively.**

ANAKS argues that Conditional Use Permit No. 2020-10382 should be set aside because the Zoning Board’s decision to grant it was arbitrary and capricious and



1 unsupported by substantial evidence. ANAKS's Op. Br. at 21-30. Specifically, ANAKS  
2 takes the position that the Zoning Board failed to require AK to carry its burden of proof  
3 regarding compliance with SZL § 702 and simply "rubber-stamped" AK's application. *Id.*  
4 at 10, 21. ANAKS also asserts that the Zoning Board "failed to apply the criteria in the  
5 SZL to [AK's] proposed use" and instead "delegated the relevant issue [of compatibility] to  
6 other CNMI and federal agencies." *Id.* at 22. Finally, ANAKS argues that the Zoning  
7 Board "failed to explain its findings [regarding § 702 compatibility] in writing." *Id.*

8 Saipan Zoning Law, Article 7, Section 702 ("General Requirements for All  
9 Conditional Uses") requires that all conditional uses "be compatible with the existing or  
10 allowable uses of adjacent properties and surrounding neighborhood" and that they  
11 "adequately avoid or mitigate unacceptable significant adverse impacts" to the  
12 environment, including noise, air, traffic, and other factors. SZL §§ 702(a)-(h). Having  
13 reviewed the full certified record, including the transcripts of the January 19, March 9, and  
14 March 18 Zoning Board meetings, the Court is satisfied that the Zoning Board took its  
15 duties seriously, extensively engaged with AK and ANAKS about the requirements of  
16 § 702, and ultimately considered § 702 compatibility in its final decision.

17 The record shows that the Zoning Board required AK to supplement its application  
18 several times to directly address the § 702 compatibility concerns raised by ANAKS at the  
19 January 19 and March 9 public meetings. *See* Ex. 8-041 – 8-069 (discussing how AK's  
20 project meets each of the eight requirements of § 702, including the project's compatibility  
21 with existing or allowable uses of adjacent properties and AK's efforts to avoid or mitigate  
22 adverse environmental impacts and take into consideration the public health, safety, and  
23 welfare); Ex. 8-074 – 8-107 (addressing ANAKS's concerns regarding viewshed and  
24 lighting as well as stormwater, oil, fuel, and gas management); Ex. 26 (reiterating project's  
25 compatibility with SZL § 702 and responding to ANAKS's "Memorandum of Points and  
26 Authorities in Opposition to [AK's] Conditional Use Application"); Ex. 33, 34 (responding  
27 to ANAKS's proposed conditions, accepting some and suggesting changes to others). This  
28 runs counter to ANAKS's assertion that the Zoning Board failed to require AK to carry its

1 burden of proof regarding compliance with SZL § 702 and that AK’s application was  
2 simply “rubber-stamped.”

3 The record also shows that the Zoning Board engaged with AK and ANAKS about  
4 the requirements of § 702 at each meeting and required AK’s experts to explain how they  
5 planned to avoid or mitigate adverse impacts to the environment generally and to ANAKS  
6 specifically. For instance, at the **January 19 meeting**, the Zoning Board required AK’s  
7 project consultant to discuss AK’s efforts to work with other agencies such as DFW and  
8 BECQ to mitigate environmental concerns. Ex. 18-018 – 18-019. The Board also heard  
9 from AK’s project designer about how the project would comply with EPA regulations.  
10 Ex. 18-023 – 18-027. The Chairman acknowledged that the Zoning Board was “trying to  
11 address Section 702, the Zoning Law which is basically how does the project affect public  
12 health, safety, and welfare of the surrounding[s]. So, [that’s] the reason why for all these  
13 questions. Yes, we are not CRM or DEQ . . . but it is a surrounding neighborhood . . . and  
14 it’s really necessary to consider those conditions.” Ex. 18-037. He then paused the session  
15 to get advice from legal counsel on “the matter of Section 702 and the legal parameters  
16 around that particular subject.” Ex. 18-072.

17 At the **March 9 meeting**, the Zoning Board had AK’s project designer present on  
18 AK’s supplemental report and appendices, which included studies relating to mitigation of  
19 noise, air pollution, traffic, viewshed, stormwater and oil. Ex. 21-008 – 21-013; 22-003 –  
20 22-005. The Zoning Board also had the entirety of Ms. Fuller’s letter read into the record  
21 and continued the meeting to a later date in consideration of the concerns she raised. Ex.  
22 21-013 – 21-019. At the **March 18 special meeting**, after opening the floor for public  
23 comments, the Zoning Board instructed AK to directly respond to the concerns raised by  
24 ANAKS. In response to ANAKS’s concern that living next door to a vehicle repair facility  
25 would interfere with residents’ peace and quiet, AK’s project designer explained that the  
26 building would be fully enclosed within concrete walls to mitigate noise and that AK  
27 would attempt to “isolate [equipment] from the ground, so that noise doesn’t transfer  
28 through to structure to the exterior.” Ex. 20-036 – 20-037. In response to ANAKS’s

1 concern that the repair facility’s paint booths would emit harmful chemicals and contribute  
2 to air pollution, Rob Jordan, a certified industrial hygienist, explained AK’s plan to use a  
3 “control strapped paint booth . . . provisioned with very high-end efficient scrubbers or  
4 filters” that he was confident would “comply[] with all the regulations.” Ex. 20-029 – 20-  
5 032. Based on these discussions, which are clearly detailed in the transcripts of the  
6 meetings and summarized in Zoning Board meeting minutes, *see* Ex. 18-23, the Court fails  
7 to understand how ANAKS can claim that the Zoning Board shirked its duties and refused  
8 to meaningfully engage in the question of § 702 compatibility.

9 ANAKS’s assertion that § 702 compatibility was not considered at all by the  
10 Zoning Board is also undermined by the 19 qualifying conditions imposed by the CUP.  
11 *See* Ex. 25. Section 1308(a) of the SZL describes the purpose of requiring an applicant to  
12 obtain a permit for a conditional use from the Zoning Board:

13 Conditional use permits shall be obtained for certain uses that would  
14 ***become harmonious or compatible with neighboring uses through the***  
15 ***application and maintenance of qualifying conditions*** and siting in specific  
16 locations within a zoning district, ***but that would not be allowed under the***  
17 ***general conditions of the zoning district*** as stated in this Law.

18 SZL § 1308(a) (emphasis added). Here, an auto repair facility – allowed as of right in  
19 Industrial zones only – would not be allowed under the general conditions of the Mixed  
20 Commercial zoning of Lot EA 896, the subject property, nor would it be compatible with  
21 the neighboring ANAKS property, *but for the application and maintenance of qualifying*  
22 *conditions*. The 19 conditions imposed by the Zoning Board appear to be exactly those  
23 “qualifying conditions” whose “application and maintenance” are meant to allow a project  
24 such as AK’s to “become harmonious or compatible with neighboring uses” such as the  
25 ANAKS property.

26 ANAKS points to certain statements made by various Zoning Board members  
27 during the public meetings as proof of their indifference to applying the criteria in § 702 to  
28 AK’s application, *see* ANAKS’s Op. Br. at 25-28, but the great weight of the record simply  
does not support ANAKS’s position. ANAKS seems particularly troubled by the Zoning

1 Board’s reference of certain technical issues to BECQ and CRM, arguing that this is proof  
2 the Board “delegated the relevant issue [of compatibility] to other CNMI and federal  
3 agencies.” But these statements simply appear to be reassurance from the Zoning Board  
4 that the permitting process with these other agencies would provide additional layers of  
5 protection to ANAKS<sup>10</sup>, not confessions that the Zoning Board disregarded the project’s  
6 impact on ANAKS.<sup>11</sup>

7 Finally, ANAKS’s concern that the Zoning Board “failed to explain its findings  
8 [regarding § 702 compatibility] in writing” is misguided and does not warrant the setting  
9 aside of the CUP for several reasons. First, ANAKS was not entitled to formal findings of  
10 fact and conclusions of law because it was not entitled to a plenary contested case hearing  
11 pursuant to §§ 9108-10. Second, the CUP does, in fact, incorporate the Zoning  
12 Administrator’s memo, which contains findings on every factor in SZL § 702. *See, e.g.*,  
13 Ex. 7-004 (“The proposed development is compatible with existing developments adjoining  
14 the property.”), 25. Third, even if Conditional Use Permit No. 2020-10382 and Zoning  
15 Board Order No. 2022-1-03 are somehow deficient, the error is harmless where, as here,  
16 the record supports the decision reached by the Zoning Board. *See Tarbox v. Zoning Bd. of*  
17 *Review for Jamestown*, 2013 R.I. Super. LEXIS 44, \*13 (2013) (rejecting argument that the  
18 lack of findings of fact precluded a review of zoning board decision and explaining that  
19 “courts should not subject the parties to such delay and inconvenience where they were  
20 able to satisfy themselves from the record that the board’s decision was either correct or  
21 erroneous regardless of the failure to give reasons for their decision.”); *South Anchorage*  
22 *Concerned Coalition v. Coffey*, 862 P.2d 168, 175 (1993) (“The second set of factual  
23

---

24 <sup>10</sup> *See, e.g.*, Ex. 23-003 (“[Vice-Chairman Aguon’s] decision will be based on the information presented from  
25 both sides. Chairman Inos clarifies that all environmental studies will be submitted and reviewed by BECQ,  
where applicant will be going through another public hearing.”).

26 <sup>11</sup> To the contrary, at the March 9 meeting, the Chairman reassured attendees that “[a]ll the concerns were  
27 heard from both the developer as well as the public” and that the Board wanted “as much information” as it  
28 could get to “make a sound decision” in consideration of “how everybody [] is impacted, both the developer  
side as well as the resident side.” Ex. 18-076. At the March 18 special meeting, prior to voting, the  
Chairman reiterated that the Zoning Board had “reviewed [the] documents forwarded to us from both  
stakeholders and landowners.” Ex. 20-038.

1 findings issued by the Commission is certainly not a model of clarity. However, when we  
2 supplement the findings with the comments which the commissioners made on the record  
3 while they considered the permit application, their reasoning and conclusions become  
4 clear.”); *Glenbrook Rd. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d  
5 22, 33 (1992) (“It would have been better if the Board had explicitly incorporated into its  
6 decision the language of the Regulation, so that no one could have doubted the Board’s  
7 meaning. Its failure to do so, however, does not require reversal of its decision by this  
8 court.”); *id.* at 26-31 (finding errors in agency proceedings harmless where the court was  
9 “satisfied that, in general . . . no one ran roughshod over the rights of anybody else” and  
10 noting that “perfection is a rare commodity”).

11 In sum, the Court, having reviewed the full certified record, is satisfied that the  
12 Zoning Board’s decision to grant AK’s conditional use application was supported by  
13 substantial evidence – that is, the decision was a reasonable exercise of discretion and was  
14 adequately supported by evidence in the record. The Court also finds that the Zoning  
15 Board did not act arbitrarily or capriciously but rather acted within a zone of  
16 reasonableness after considering all of the relevant compatibility issues.

17 **D. The Decision to Grant AK’s Application Was Within the Zoning Board’s**  
18 **Statutory Authority and the Zoning Administrator’s Qualifications Are Not a**  
19 **Basis to Set Aside the CUP.**

20 As an additional basis for setting aside the CUP, ANAKS argues that the Zoning  
21 Board acted beyond its statutory authority when it hired a Zoning Administrator who  
22 lacked the professional credentials required by 2 CMC § 7222(a). ANAKS’s Op. Br. at 6.  
23 ANAKS asks the Court to compel the Zoning Board “to hire an Administrator with the  
24 necessary legal qualifications under 2 CMC § 7222(a)” to re-assess AK’s project. *Id.*

25 Indeed, 2 CMC § 7222(a) of the Zoning Code provides:

26 There is established in the Commonwealth government the position of  
27 zoning administrator. The administrator shall serve at the pleasure of the  
28 Zoning Board. *The administrator shall have at least a baccalaureate  
degree, but preferably a graduate degree, in planning or a related field, and  
five years of progressive experience in land use planning, comprehensive  
planning, or land use administration.* All other qualifications of applicants

1 being equal, preference in hiring will be given the applicant with the most  
2 advanced degree in planning or a related field.

3 2 CMC § 7222(a) (emphasis added). The Court agrees with ANAKS that the requirements  
4 set forth in the statute are clear and unambiguous: the Zoning Administrator must have at  
5 least a bachelor's degree in planning or a related field *and* five years' experience in land  
6 use planning or administration. A review of the Zoning Administrator's application<sup>12</sup>  
7 reveals that her degree and work experience – while impressive and extensive – are  
8 unrelated to planning and/or land use as required by 2 CMC § 7222(a).

9 Nevertheless, the Zoning Administrator's qualifications are not grounds to set aside  
10 AK's CUP because the decision-making authority rested with the Zoning Board, not the  
11 Zoning Administrator. Pursuant to SZL § 309(e)(4), the Zoning Board has the "complete  
12 jurisdiction and power" to approve, deny, or approve with conditions all applications for  
13 permits. The Zoning Board also has the power to hire and supervise the activities of the  
14 Zoning Administrator and to decide any appeal taken from a decision of the Zoning  
15 Administrator. SZL §§ 309(e)(26), 1406. In other words, the Zoning Board's powers  
16 trump the Zoning Administrator's powers, and a decision made by the Zoning Board will  
17 always trump a decision made by the Zoning Administrator.

18 Turning to the specific procedure outlined for approval of conditional use permits,  
19 SZL §1308 mandates that "[t]he Board shall decide these applications" following a public  
20 hearing. SZL § 1308(a), (c)(2). The Zoning Administrator's role is to "determine in  
21 writing whether the application is sufficiently complete to accept it for filing" and to  
22 prepare a report to aid the Zoning Board at the hearing on the application. SZL  
23 §§ 1302(f)(1), 1403(b). That the Zoning Administrator provides a report with findings and  
24 recommendations prior to the hearing does not relieve the Zoning Board of its independent  
25 duty to "[a]dminister and enforce [the SZL] and the Zoning Code." SZL § 309(e)(1). The

---

26 <sup>12</sup> The Court takes judicial notice of the application documents setting forth the credentials of Zoning  
27 Administrator Geralyn Dela Cruz as submitted to the Zoning Board through the Office of Personnel  
28 Management because they are public records maintained by the Executive Branch of the CNMI government  
and subject to the Open Government Act, 1 CMC §§ 9901, *et seq.* See Petitioner's Request for Judicial  
Notice ISO Petitioner's Opening Brief (filed October 2, 2023).

1 Board has the power to disregard the Zoning Administrator’s report entirely and vote  
2 against the Zoning Administrator’s recommendations. Section 1302(f)(1) even states that  
3 if the Zoning Administrator fails to make a determination on a permit application within  
4 the requisite time period, the application is automatically deemed complete for filing. SZL  
5 § 1302(f)(1).

6 ANAKS suggests that the Zoning Board simply “rubber-stamped” AK’s  
7 application after receiving the Zoning Administrator’s memo, but this is not supported by  
8 the record. ANAKS’s Op. Br. at 10. As the Court has already found in Section IV(C)(3),  
9 *supra*, the record shows that the Zoning Board took its duties seriously and extensively  
10 engaged with AK and ANAKS about the requirements of § 702 over the course of  
11 multiple days and across numerous lengthy submissions – including legal memoranda,  
12 expert reports, and supplemental reports – before ultimately voting to approve AK’s  
13 application. The record also shows that the Zoning Board had sufficient information to  
14 make its own determination about whether AK’s application was “consistent with the  
15 requirements of Article 7,” SZL § 1308(d), independent of the Zoning Administrator’s  
16 findings and recommendations.

17 ANAKS suggests that if the Court chooses not to set aside AK’s CUP on the basis  
18 of the Zoning Administrator’s qualifications, it should at least “not give any particular  
19 deference to the Zoning Board’s actions because of the evident lack of the statutorily  
20 required agency expertise.” ANAKS’s Op. Br. at 12 (“Where there is no agency expertise,  
21 the Court has little reason to give deference to the agency.” (citing cases)). However, as  
22 the Court has already found in Section IV(C), *supra*, the Zoning Board’s decision  
23 withstands scrutiny whether analyzed under the deferential “arbitrary and capricious”  
24 standard or the more exacting “substantial evidence” standard.

25 In sum, the Zoning Administrator’s qualifications are an insufficient basis to set  
26 aside the CUP where the decision to approve AK’s application rested squarely within the  
27 Zoning Board’s statutory authority and was supported by substantial evidence.

1           **E. The Zoning Board’s Decision Was Not Contrary to ANAKS’s Constitutional**  
2           **Right to a Clean and Healthful Environment Pursuant to Art. 1 § 9 of the NMI**  
3           **Constitution.**

4           Courts may hold unlawful and set aside agency action found to be “contrary to a  
5 constitutional right, power, privilege, or immunity.” 1 CMC § 9112(f)(2)(ii).

6           ANAKS asks the Court to set aside AK’s CUP because “the Zoning Board’s  
7 decision to approve the conditional use permit without fully evaluating the project’s  
8 impacts on the vicinity generally and the residents of [ANAKS] specifically is contrary to a  
9 constitutional right . . . the right to a clean and healthful environment.” Pet. ¶ 14.  
10 Specifically, ANAKS alleges that the Zoning Board “did not require AK to quantify the  
11 noise levels from the facility” and “did not include a noise limit in the Conditional [Use]  
12 Permit,” despite ANAKS’s requests. ANAKS’s Op. Br. at 13-14. The Zoning Board’s  
13 failure to do so, according to ANAKS, will cause ANAKS to suffer “harmful and  
14 unnecessary noise pollution” rising to the level of a constitutional violation. *Id.*

15           The full text of Article 1, Section 9 of the NMI Constitution states as follows:

16           ***Each person has the right to a clean and healthful public environment in***  
17           ***all areas, including the land, air, and water.*** Harmful and unnecessary  
18           noise pollution, and the storage of nuclear or radioactive material and the  
19           dumping or storage of any type of nuclear waste within the surface or  
20           submerged lands and waters of the Northern Mariana Islands, are prohibited  
21           except as provided by law.

22           N.M.I. Const. art. I § 9 (emphasis added).<sup>13</sup>

23           Although the residents of ANAKS undoubtedly have a constitutional right to a  
24           clean and healthful environment, nothing in the record suggests to this Court that the  
25           Zoning Board’s decision ran roughshod over this right or subjected ANAKS to “significant  
26           environmental injuries” that are “probable to occur.” *See Atalig v. Mobil Oil Mariana*  
27           *Islands, Inc.*, 2013 MP 11 ¶ 24.

28           With regard to ANAKS’s claim that the Zoning Board approved the CUP without  
29           fully considering the project’s environmental impacts on the vicinity generally and the

---

<sup>13</sup> The right to a clean and healthful environment is self-executing. *Govendo v. Marianas Pub. Land Corp.*, 2  
N. Mar. I. 482, 502 n.16 (1992).



1 residents of ANAKS specifically, the Court has already addressed this contention at length  
2 in Section IV(C)(3), *supra*. The record does not support ANAKS’s position and shows,  
3 instead, that the Zoning Board took numerous studies concerning noise, air, and light  
4 pollution (among others) into consideration when making its decision.

5 Next, ANAKS’s claim that the Zoning Board “did not require AK to quantify the  
6 noise levels from the facility” is contradicted by the Noise Study Report submitted by AK  
7 as an appendix to AK’s February 23, 2022 “Follow Up Response to [the January 19] Public  
8 Hearing.” Ex. 8-053 – 8-054 (table listing sound power level of each equipment type,  
9 distance of equipment from ANAKS property line, and hours during the day equipment  
10 will be in use).

11 ANAKS also complains that the Zoning Board “did not include a noise limit in the  
12 Conditional [Use] Permit” but fails to explain how this subjects ANAKS to “significant  
13 environmental injuries” that are “probable to occur.” Indeed, none of the injuries that  
14 ANAKS speculates will occur seem probable in light of the 19 conditional safeguards  
15 embedded in AK’s CUP. There is no indication that AK has or will imminently violate  
16 said conditions, and even just one violation out of any of the 19 conditions would subject  
17 AK to a \$1,000 per day penalty for noncompliance and risk of permit revocation.<sup>14</sup>

18 For the reasons stated above, the Court declines to set aside AK’s conditional use  
19 permit on the basis of 1 CMC § 9112(f)(2)(ii).

---

23 <sup>14</sup> ANAKS appears particularly concerned about noise pollution. Three of the 19 conditions in AK’s  
24 conditional use permit address noise:

25 (2) Applicant shall employ proper measures to control the noise level from reaching unacceptable  
levels beyond its property lines.

26 (3) Applicant shall ensure that its operation does not generate noise, odor, light and dust that will  
affect the neighborhood.

27 (18) The applicant shall maintain decibel levels as reported and submitted to the Zoning Office,  
within its property lines.

28 Ex. 25-002 – 25-003.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**V. CONCLUSION**

**THEREFORE**, for the reasons stated above, the Court **AFFIRMS** the Zoning Board's decision to grant Conditional Use Permit No. 2020-10382, **AFFIRMS** Zoning Board Order No. 2022-1-03, and **DENIES** the relief sought in ANAKS's Petition for Judicial Review.

**IT IS SO ORDERED** this 11<sup>th</sup> day of March, 2024.

/s/  
**DAVID A. WISEMAN**, Judge Pro Tem