

**TOWN OF JONESPORT
BOARD OF APPEALS**

**DECISION
AND
STATEMENT OF FINDINGS AND CONCLUSIONS**

**In re: Protect Downeast's Administrative Appeal
of the Planning Board's Decisions Concerning the
Kingfish Maine, Inc. Application #800**

On or about December 29, 2022, Protect Downeast, a membership-based organization that describes itself as a diverse coalition of Jonesport residents and business owners and their allies in nearby communities who oppose Kingfish Maine, Inc.'s ("Kingfish") application for the construction and operation of an aquaculture farm (the "Project"), filed an administrative appeal pursuant to Jonesport's Shoreland Zoning Ordinance ("SZO") and Land Use and Development Ordinance ("LUDO"), challenging the Planning Board's November 29, 2022, decision to approve the Project pursuant to the LUDO and the SZO.¹

Based on the following findings and conclusions, having heard from all parties and the public following a public hearing held on February 14, 2023, we, the Board of Appeals, deny Protect Downeast's administrative appeal and affirm the Planning Board's Decision.

Factual and Procedural Background

The following factual and procedural background is derived from the agreed record on appeal ("Record").² Unless otherwise stated, these facts are uncontested.

Kingfish proposes to construct and operate a land-based recirculating aquaculture system ("RAS") facility to raise saltwater finfish species, yellowtail kingfish (*Seriola lalandi*) at 9 Dun Garvin Road (the "Property"). The Property consists of approximately 93.2 acres and has approximately 3,206 feet of frontage on Chandler Bay in the general vicinity of Natt Point. The Property is located in the Limited Residential Recreational District ("LRRD") under the LUDO and, in part, in the Limited Residential Zone ("LRZ") under the SZO.³

¹ Cynthia Beauvais and Karl Ebert, Owen Moody, and Carrie Peabody also joined Protect Downeast's administrative appeal.

² A physical copy of the Record is available for review and inspection at the Town Office. Electronic copies are available and may be provided upon request. The Record Index is included as Attachment A to this Decision and Statement of Findings and Conclusions. It reflects all items included in the Record and considered by this Board. The Board also considered oral arguments and comments made by Protect Downeast, Kingfish, and members of the public at the public hearing.

³ Protect Downeast's appeal refers to the Property as being located in the "Rural Residential Zone." The Board assumes this was an error because Protect Downeast did not at any meeting or hearing dispute the Property is located in the LRRD or the LRZ. Further, Protect Downeast cites the LUDO Table of Uses in such a way that it appears Protect Downeast treats the "Rural Residential Zone" as synonymous with the LRRD, at least regarding

The Project includes two primary buildings, access roads, housing, a store, and a farm store and information center. Building 1 contains a broodstock facility and a hatchery. Building 2 contains a series of separate tanks to maintain and grow the fish as they progress to market size. In addition to broodstock and grow out facilities, the Project includes backup power generation facilities and conventional utility infrastructure. The Project includes two intake pipes and two outfall pipes in Chandler Bay, and treatment facilities to treat seawater supply and wastewater discharge. Approximately 6.5 million gallons of seawater per day is proposed for use in the recirculating aquaculture system, and approximately 22.2 million gallons of seawater per day is proposed for heat exchange.

On October 1, 2021, Kingfish filed an application for a permit under the LUDO and a permit under the SZO.⁴ This application form was accepted and designated Application #800 (“Application”). Following an initial review of the materials submitted, on October 19, 2021, the Planning Board tabled Kingfish’s Application pending notification from Kingfish that it has received all necessary non-municipal permits. Kingfish notified the Planning Board that it had obtained the necessary permits and determined the Application was complete on July 19, 2022.

The Planning Board held a series of public hearings to consider the application, accepting public comment at each hearing regarding each approval criterion of the LUDO and the SZO. Protect Downeast actively participated in those hearings, arguing Kingfish was not entitled to approval under either the LUDO or the SZO. The Planning Board’s Findings and Conclusions list the documents accepted and considered by the Board, all of which are included in the Record for this administrative appeal. The Planning Board took a preliminary vote to find that Kingfish satisfied all requirements of the LUDO on August 25, 2022. The Planning Board made a preliminary determination that Kingfish satisfied all requirements of the SZO on October 20, 2022. The Planning Board issued its final approval pursuant to both ordinances, approved Kingfish’s Application, and adopted two sets of Findings & Conclusions on November 29, 2022.⁵ (collectively, the “Planning Board’s Decision” or the “Decision”).

On or about December 29, 2022, Protect Downeast filed this administrative appeal. At a meeting held on January 10, 2022, the Board of Appeals, in consultation with the parties, issued a procedural order setting out a process for agreeing what materials constituted the Record, deadlines for submitting legal briefs, and dates for the public hearing and deliberations. At this

what uses are permitted or not, which is the only relevancy of the issue of zoning for purposes of this administrative appeal.

⁴ The Board acknowledges Protect Downeast objects to the Planning Board’s consideration of the Application in two parts, an approval under the LUDO and an approval under the SZO. Protect Downeast made clear at the public hearing it had three grounds for appeal, none of which this Board understands to include this objection. It is not readily apparent how this objection relates to Protect Downeast’s three arguments. Nonetheless, to the extent Protect Downeast claims this objection is an independent ground for relief, the Board concludes the Planning Board did not err in considering the Application in two parts.

⁵ With respect to the issue of subdivision review, Kingfish agreed to amend the Application to reduce the number of dwelling units so that no subdivision review was required.

meeting, the Board and the parties also discussed the issue of the applicable standard of review and conflicts of interest, which are discussed in more detail below.

Subsequently, the parties, in consultation with the Town Attorney, agreed upon the scope of the Record. The Town Attorney compiled this Record electronically and circulated it to the Board and the parties. An initial public hearing was scheduled for January 31, 2023. Before the Board of Appeals opened the public hearing, it was discovered that not all Board members had successfully accessed the Record or the parties' briefs. Neither Kingfish nor Protect Downeast were willing to proceed with the public hearing in light of this disclosure. To resolve this issue, the parties and the Board agreed the Town Attorney would produce for the Board a physical copy of the record, at the expense of Protect Downeast, and hold a public hearing on February 14, 2023, followed by deliberations on February 15 and ~~28~~, 2023.⁶

March 7

A public hearing was held on February 14, 2023. Deliberations were held on February 15, 2023. The Board reached a unanimous preliminary conclusion that the Planning Board did not err and instructed the Town Attorney to draft an opinion reflecting this conclusion and the Board's reasoning.

Procedural and Jurisdictional Matters

A. Jurisdiction, Completeness, and Timeliness

We have jurisdiction to hear this administrative appeal by virtue of Section 9.E of the LUDO and Section 16.G.1.a of the SZO because Protect Downeast challenges the Planning Board's Decision that Kingfish satisfied the applicable provisions of the SZO and the LUDO.⁷ We also find the administrative appeal application is complete and timely.

⁶ Copies of the Record were provided to the Board and parties in advance of the public hearing by the Town Attorney. Kingfish provided copies of all video files on flash drives. The Town has not yet received a payment from Protect Downeast. This fact, while noted for the record, plays no role in this decision.

⁷ LUDO § 9.E:

The Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board . . . in the administration of this Ordinance. Such hearings shall be held in accordance with State laws. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board . . . only upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.

SZO § 16.G.1.a:

Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the . . . Planning Board in the enforcement or administration of this Ordinance.

See also Board of Appeals Ordinance § 4.A:

Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by . . . [the] Planning Board. Following such a hearing, the Board may reverse the decision of the Planning Board only upon finding that the decision is clearly contrary to specific provision(s) of an ordinance(s) of the Town of Jonesport.

B. Standing

Pursuant to the SZO and the LUDO, to have standing to bring an administrative appeal, a party must demonstrate it is an “aggrieved party.” The term “aggrieved party” is defined to include, among other classes of parties, “any other person or group of persons who have suffered a particularized injury as result of the granting or denial of such permit . . .” We also understand the Law Court has interpreted nearly identical language to mean a party has standing to bring an appeal if that party (a) participated in the underlying proceeding and (b) has suffered a particularized injury as a result of the municipal action taken during that proceeding.

Protect Downeast asserts that it has standing to file this appeal on behalf of its members because they have been aggrieved by the Planning Board’s Decision and Protect Downeast participated extensively before the Planning Board. Kingfish characterizes the case for standing as “thin” but “without prejudice to Kingfish’s right to argue against Appellant’s standing should this matter proceed forward to an appeal before the Maine Superior Court,” Kingfish did not challenge the standing of Protect Downeast or the individuals joining the appeal.

We agree Protect Downeast and the individuals that joined its appeal have standing individually and collectively to bring this appeal because the Record demonstrates the organization and individuals actively participated individually and collectively in the Planning Board proceedings and have interests distinct from that of the general population of Jonesport by virtue of the location of some members’ properties to the Project.

C. Conflicts of Interest

The following members and alternates presided at the public hearing and deliberations: Holly Iossa, Sarah Davis, William Blackwood, Jim Smith, Ernie Rackliffe, and David Rier. Ernie Rackliffe was unanimously appointed a voting member for purposes of this appeal for February 14, 25, and 28, 2023.

↑ *March 7*
At its first meeting to consider this appeal, Board Chair Iossa and Member Smith disclosed they were related within less than seven degrees of consanguinity to Planning Board Member Paul Iossa, and to Planning Board Chair, Frank Smith, respectively. The Town Attorney advised this was a bias based on blood relation to another party pursuant to 1 M.R.S. § 71(6) but may be waived so long as the parties and the Planning Board consented in writing. The Board, excluding the members with the familial bias, voted unanimously on January 10, 2023, to allow both members to participate upon the condition that such written waivers were obtained. Protect Downeast and Kingfish, through respective counsel, subsequently replied by email to the Town Attorney to confirm they consented to waiving these familial conflicts. Having consulted with the relevant staff, we understand the Planning Board also provided its written consent to this waiver.

On January 10 and February 14 and 15, 2023, the parties were asked if they had any objections to any Board member on the grounds of bias or a conflict of interest. The Parties raised no such objections.

D. Standard of Review

This Board of Appeals conducted an appellate review of the Planning Board's Decision. On this point, we reproduce and reaffirm the following reasoning from our January 10, 2023, procedural order:

At the request of the Appellant and the Applicant, as well as the advice of the Town Attorney, the Board addresses at this early juncture the issue of whether the standard of review under the Land Use Development Ordinance ("LUDO"), Shoreland Zoning Ordinance ("SZO), and Board of Appeals Ordinance ("BAO") provides for an appellate or *de novo* review. The Board addresses this issue now because the standard of review will have a significant impact on the schedule and nature of the proceedings.

Appellant, Protect Downeast, in its original appeal filing argues that the standard of review for this appeal is *de novo* and that as such the Board should be required to (a) review the entire administrative record, (b) permit the introduction of new, relevant evidence into that record, (c) consider all of the evidence for itself as if it were the body tasked with approving or denying the Application; (d) not show any deference to the decisions and findings of the Planning Board. Letter from Protect Downeast to Board of Appeals (December 29, 2022) ("Appeal Letter") (emphasis omitted). In response, by letter dated January 9, 2023, Kingfish argues the standard is appellate. In a letter dated January 10, 2023, Protect Downeast reconsiders its position and agrees the proper standard of review is appellate.

For the following reasons, having reviewed the parties' submissions and received advice from the Town Attorney, the Board concludes that the ordinances that provide it jurisdiction to consider this appeal—the SZO, the LUDO, and the BAO—all provide for an appellate review only.

The Law Court case *Friends of Lamoine v. Town of Lamoine*, 2020 ME 70, ¶¶ 12-16, 234 A.3d 214, is particularly instructive. The Law Court recognized that "[p]ursuant to 30-A M.R.S. § 2691(3)(C), the default review for a board of appeals is *de novo*, but a town's ordinance may establish an appellate standard instead." It made clear, over the objection of the applicant in that case, that an ordinance needs to use the word 'appellate' to nonetheless require the board of appeals to undertake an appellate, rather than a *de novo*, review. In *Friends*, the Law Court specifically noted that the following language indicates an appellate review: "[the board of appeals] may modify or reverse action of the planning board or code enforcement officer . . . only upon a finding that the decision is clearly contrary to specific provisions of this chapter." (citations omitted).

Here, all three Jonesport ordinances at issue provide a "clearly contrary" standard. SZO § 16(G)(3)(b)(2) ("The board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the

decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.”); LUDO § 9(E) (“[T]he Board of Appeals may reverse the decision of the Planning Board or Code Enforcement Officer only upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.”); BAO § 4(A) (“Following such a hearing, the Board may reverse the decision of the Code Enforcement Officer or Planning Board only upon finding that the decision is clearly contrary to specific provision(s) of an ordinance(s) of the Town of Jonesport.”) and § 6(B)(2) (“The Board may reverse the decision, or failure to act, of the Code Enforcement Officer and/or Planning Board only upon finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.”). Further, other indicia of an appellate review are present throughout the ordinances: the record of the Planning Board is transferred to the Board of Appeals and the Board of Appeals is not authorized to accept new evidence. Therefore, the Board concludes it shall conduct an appellate review of this appeal.

Protect Downeast’s Arguments on Appeal

Protect Downeast asks this Board to reverse the Planning Board’s Decision on three grounds. We address each in turn.

A. Protect Downeast argues the Planning Board acted clearly contrary to the LUDO when it found the Project constituted a “functionally water-dependent use” and concluded, therefore, it is a permitted use.

Protect Downeast argues the Planning Board made a finding that is clearly contrary to Section 15 of the LUDO (the Table of Uses). The Planning Board finding in question is as follows:

LUO, § 15 Table of Land Uses

The Premises is situated in the Limited Residential/Recreational District under the LUO, with a portion of the Premises situated in the Limited Residence Zone under Shoreland Zoning. The Board considered whether the proposed use of aquaculture was permitted in the Limited Residential/Recreational District. The Board considered and rejected the suggestion that the proposed use constitutes a general “industrial structure” or “commercial structure” and concluded that the use does not fall within the definition of “agriculture.” The Board discovered that the term “functionally water-dependent use” as used in Table of Land Uses 19.B is not defined by the LUO, so the Board sought guidance from the Shoreland Zoning Ordinance, which does define the term. Section 17(20) of the Shoreland Zoning Ordinance defines “functionally water-dependent use” to mean:

those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these water. The uses, include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish

processing, fish storage, and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

The Board found that functionally water dependent uses are permitted in the Limited Residential/Recreational District with Planning Board approval. The Board considered, and rejected, the argument that a functionally dependent water use would be prohibited in the Limited Residential/Recreational District by Table of Land Uses, §15, 13(E) and (F), because the use could be categorized as commercial or industrial structures. The Board found by a vote of 4 in favor to 1 against (Guptill) that the proposed use is permitted with Planning Board approval in the Limited Residential/Recreational District as a functionally water-dependent use under the Table of Land Uses, §15, 19(B). The facility requires in-fall and out-fall pipes to supply it with ocean water used to raise fish.⁸

Protect Downeast claims this finding is clearly contrary to the LUDO because the Planning Board should have concluded the Project consists of “[c]ommercial structures” and “[i]ndustrial structures,” which are prohibited under LUDO Section 15. Alternatively, Protect Downeast asserts that if the Board agrees the Project may be classified as both “[c]ommercial structures” and “[i]ndustrial structures” and a “marine-related activity,” that is a conflict within the Ordinance, and Section 11 of the LUDO demands that the conflict must be resolved by classifying the Project as industrial or commercial structures, because those two uses are more restrictive than marine-related activities (the former is prohibited and the latter is permitted), and the more restrictive provision must control over the less restrictive provision.

Kingfish counters the Planning Board’s finding on this point is sound. Namely, the LUDO’s drafters generally prohibited the use of commercial and industrial structures in the LRRD, but included a more specific exception to allow “marine-related activities” including “functionally water-dependent uses.” Kingfish contends this interpretation is consistent with viewing the plain language as a whole and is consistent with various applicable canons of ordinance construction. Kingfish also emphasizes the clearly contrary standard is a high burden and notes that Section 11, “Conflicts with *Other* Ordinances,” does not apply by its own terms to any perceived or actual conflict within the provisions of the LUDO itself.

In short, we conclude the Planning Board’s interpretation is not clearly contrary to the LUDO. In fact, it is the far more reasonable interpretation. The Planning Board logically concluded the use was a functionally water-dependent use because substantial evidence

⁸ Record Tab 86 (Jonesport Land Use Development Ordinance Findings and Conclusions, November 29, 2022) (italics added).

in the Record demonstrates it would be difficult, if not impossible, to operate the Project away from the ocean. The Planning Board did not err when it relied on the definition of a functionally water-dependent use found in the SZO. We agree with the Planning Board: because this use requires in-fall and out-fall pipes to supply it with ocean water to raise fish, it fits within this definition. We agree with Kingfish that this definition is more specific than that of commercial or industrial structures and, therefore, the most reasonable interpretation is that the drafters' intended to allow commercial and industrial structures so long as they were part of a permitted marine activity. As such, there is no internal conflict within the Table of Uses. For these reasons, we deny Protect Downeast's appeal on this ground.

B. Protect Downeast argues the Planning Board acted clearly contrary to the SZO Section 15.R when it concluded the Project would not impair any designated use in Chandler Bay.

Protect Downeast argues the Project's discharge of nitrogen will lower the existing water quality which will, in turn, impact the designated uses of Chandler Bay, in violation of Section 15.R of the SZO.

Section 15.R of the SZO provides as follows:

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses of the water classification of the water body.

The Planning Board's relevant finding on this standard is as follows:

Chandler Bay is designated as an SB Class body of water. Class SB waters are suitable for recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation, and habitat for fish and other estuarine and marine life. Pages 9-24 of the Fact Sheet attached to [Kingfish Maine Pollution Discharge Elimination System Final Permit # ME0037559] issued on June 25, 2021, provides a comprehensive analysis (including calculations to support limitations established) for parameters associated with the potential impacts to aquatic life and habitat. Those parameters include biochemical oxygen demand, total suspended solids, pH, temperature, total nitrogen, drugs and therapeutants, total phosphorus, formalin, total residual chlorine and oil and grease. Kingfish's modelling was prepared by third-party experts and verified by [Department of Environmental Protection's ("DEP")] own modelling. This is the standard method for evaluating discharges with respect to water quality. This analysis demonstrates that the effluent discharge will not lower the quality of the water below its classification, either by itself or in combination with other discharges. In particular, the level of nitrogen to be discharged in the effluent when mixed in Chandler Bay will be below the threshold that is protective of eelgrass. Once

Kingfish is operating at full capacity, 36% of the total remaining assimilative capacity will remain. Water quality monitoring by DEP will ensure that timely action can be taken in the event that ambient conditions change in the future. In reviewing this criterion, the Board considered DEP's response to a list of questions that the Board submitted to it. The Board found that the Applicant demonstrated that the use will not impair designated uses of the SB water classification. See Applicant's Appendix 9A, 9C, and 12.4.⁹

Protect Downeast claims SZO Section 15.R is "absolute" and qualitatively different than DEP's "relative" water quality standard. If an activity proposed by Kingfish will impair a designated use of a waterbody, then the Planning Board was obligated to deny the Application. Impair, as Protect Downeast defines it, means to weaken or damage to any degree, even if that impairment is not so extreme as to change the classification of Chandler Bay as an SB waterbody. Protect Downeast also argues the standard is qualitatively different than DEP's because, unlike the SZO, the DEP's consideration of economic factors was a component of its finding that the Project will not impair Chandler Bay. Finally, Protect Downeast argues that because there is evidence in the Record that the designated uses of Chandler Bay will be impaired by discharge from the Project, the Board was required to find that Kingfish has not satisfied the water quality standards set forth in the SZO and deny the Application on those grounds.

Kingfish contends the major flaw with Protect Downeast's various arguments on this point is that they equate an effect on the nitrogen level with an impairment of a designated use, which is inconsistent with the statute, the SZO, and DEP's findings. Further, Kingfish argues, there is overwhelming evidence on the Record that the operation of the Project will not impair any designated use and, by the same token, a total lack of evidence of any such impairment from Protect Downeast.

We conclude the Planning Board did not act clearly contrary to the SZO because it correctly interpreted Section 15.R and because there is substantial evidence to support its finding that Kingfish satisfied the standard. Relying specifically but not exclusively on the Kingfish Maine Pollution Discharge Elimination System Final Permit # ME0037559 (including specifically the Conclusions and Findings # 1 and #3(a) on page 3), the DEP's responses to the Planning Board's questions, Kingfish's application, and Megan Sorby's testimony to the Planning Board, we conclude there is substantial evidence that while there will be increased nitrogen from the operation of the Project, that will not result in an impairment of a designated use of the water classification of the water body. We believe the evidence of Kingfish's monitoring commitments and its ability to resolve any detected potential impairment supports the Planning Board's finding that Kingfish satisfied Section 15.R. Finally, we find that Protect Downeast has not identified any persuasive evidence in the Record demonstrating there would be an impairment of such a degree it would violate Section 15.R.

It is reasonable and not clearly contrary to the SZO for the Planning Board to have relied on the DEP findings of no impairment because Standard 15.R does not on its face impose a stricter standard than that used by the DEP. This is clear from a comparison of SZO Section 15.R with Special Conditions B.1, B.2, and B.3 of the Maine Pollution Discharge Elimination System Final

⁹ Record Tab 87 (Jonesport SZO Findings and Conclusions, November 29, 2022).

Permit # ME0037559, which employ striking similar language. Protect Downeast's arguments erroneously equate a marginal lowering of water quality, a reduction that is still within established and acceptable levels for all designated uses, including the continued growth and protection of eelgrass, with an impairment of any designated use. The issue under Section 15.R. is whether there is an impaired use, not whether there is any effect at all on water chemistry parameters. We also find Protect Downeast's claim that the antidegradation analysis is a "trade off," and consideration of economic factors is not authorized by SZO Section 15.R, unpersuasive. Kingfish's argument that Protect Downeast misinterprets DEP's standard and the role of the antidegradation policy is supported by the relevant statutes and Maine DEP's answers to questions posed by Mr. Aishton on behalf of the Roque Island Gardiner Homestead Corporation and by Ms. Anastasia Fischer on behalf of the Eastern Maine Conservation Initiative. Therefore, we conclude the Planning Board did not act clearly contrary to the SZO in regard to its finding on Standard 15.R.

C. Protect Downeast argues the Planning Board acted clearly contrary to SZO Section 16.D.7 when it interpreted that section to apply to only uses within the Commercial Fisheries/Maritime Activities District.

Finally, Protect Downeast claims the Planning Board acted clearly contrary to the SZO when it deemed Section 16.D.7 of the SZO inapplicable because, the Planning Board reasoned, it applied only to uses within the Commercial Fisheries/Maritime Activities District.

Section 16.D.7 of the SZO requires a finding by the Planning Board that the proposed use "will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District." On this point, the Planning Board "found by unanimous vote that this criterion is not applicable to the current application as the Premises is not situated in the Commercial Fisheries/Maritime Activities District."¹⁰

Protect Downeast argues the Planning Board should have applied this standard because Section 16.D.7 does not require that the land use "adversely affect[ing] existing commercial fishing or maritime activities" be itself located in the Commercial Fisheries/Maritime Activities District. Kingfish counters that the Planning Board's interpretation that the activity being permitted must be located in the Commercial Fisheries/Maritime Activities District is not clearly contrary because that is the only interpretation that makes sense given the wording and the punctuation of that section.

We agree with the Planning Board. If one were to interpret the standard to apply to all activities, regardless of location, that would render the reference to activities located "*in* a Commercial Fisheries/Maritime Activities District" meaningless. The Planning Board's interpretation gives meaning to all words and, therefore, is more reasonable and not clearly contrary to any provision of the SZO.

¹⁰ Record Tab 87 (Jonesport SZO Findings and Conclusions, November 29, 2022).


Conclusion

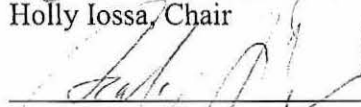
For the foregoing reasons, having found the Planning Board did not act clearly contrary to either the LUDO or the SZO, and having found substantial evidence in the Record to support the Planning Board's findings, the Board of Appeals hereby DENIES Protect Downcast's administrative appeal and affirms the Planning Board's Decision.

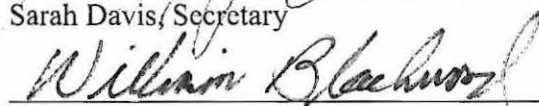
Dated: February 28, 2023

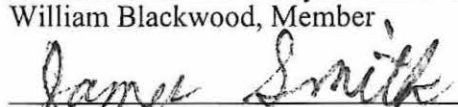
March 7

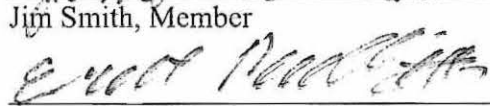
JONESPORT BOARD OF APPEALS


Holly Iossa, Chair


Sarah Davis, Secretary


William Blackwood, Member


Jim Smith, Member


Ernest Rackliffe, Acting Member