

VERMONT SUPERIOR COURT
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ENVIRONMENTAL DIVISION
Docket No. 26-ENV-00010

Woodard Marine Land Use Permit Application

DECISION ON MOTIONS

In this matter, Woodard Marine, Inc. (Applicant) appeals the District #1 Coordinator's (District Coordinator) opinion dated December 30, 2025 concluding that its application for an after-the-fact permit for a boat storage building at 615 Creek Road, Castleton, Vermont (615 Creek Road or the Property) was incomplete. The District Coordinator found that the application failed to include prior improvements related to the paving of surfaces and drives previously approved as gravel surfaces at the Property and that Applicant needed to provide "master plan" documentation for an additional 4 parcels of land on which it owns and operates various marine-related businesses. Applicant timely appealed that decision to this Court. Presently before the Court are the parties' cross-motions for summary judgment.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering a motion for summary judgment, the nonmoving party receives the benefit of all reasonable doubts and inferences. Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332.

Factual Background

We recite the following facts solely for the purposes of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts trial. Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.).

1. Applicant owns 615 Creek Road, Castleton, Vermont.

2. Applicant has operated a marine business at 615 Creek Road since 1978. Before that date, the Woodard family operated the business individually since the 1960s.
3. In 1985, Applicant sought and received an Act 250 permit to construct both a service shop and storage and parts facility at the Property (the 1985 Permit). The 1985 Permit also authorized the construction of a gravel access road and related infrastructure.
4. In 1988, without obtaining an Act 250 permit amendment, Applicant constructed an additional boat storage building at 615 Creek Road upon the belief that it did not need a permit amendment.
5. At some point following the 1985 Permit, Applicant paved access roads and areas at the Property that had previously been approved as gravel. Applicant additionally constructed a second access road.
6. In 2019, Applicant constructed a tiered storage area at 615 Creek Road which was removed and “restored” in 2020 pursuant to a plan proposed to the Agency of Natural Resources (ANR) Stormwater Program.
7. Applicant owns two parcels adjacent to 615 Creek Road that are used in connection with the marina, one to the west, conveyed in 2012, and one to the south, purchased after Alan Woodard’s death.
8. In 2005, Applicant was deeded an additional parcel to the west of the parcel conveyed in 2012, described above in ¶ 7 as adjacent and to the west of 615 Creek Road. This 2005 parcel is wooded and not used in connection with the marine operations at 615 Creek Road.
9. Applicant has a license to use a parcel to the north of 615 Creek Road that is used in connection with the marine operations at 615 Creek Road.
10. The Woodard family purchased a portion of 351 Creek Road in 1989 and another portion in 2001.
11. Prior to the 2001 conveyance, the use of both portions 351 Creek Road for dock rentals predated Act 250, and that use continued up to the Woodard’s purchase.
12. Applicant presently owns both portions of 351 Creek Road and uses them for dock rentals.
13. Applicant rents the same number of dock spaces as when it purchased the portions of 351 Creek Road in 1989 and 2001, respectively, but has replaced the docks on the portion purchased in 1989.
14. In 1994, Applicant’s predecessors acquired 53 East Creek Road (Kip’s Wharf). Applicant presently owns Kip’s Wharf.

15. In 2004, Applicant received Jurisdictional Opinion #1-366 (the 2004 JO) from the District #1 Coordinator concluding that the marine-related business occurring at Kip's Wharf was preexisting development as defined by the Act 250 Rules. The 2004 JO concluded that Applicant did not require a permit amendment to move a sales office to Kip's Wharf.

16. Applicant's attorney requested the 2004 JO. In the letter requesting the 2004 JO, Applicant's attorney explained that Applicant also intended to install 30 new docks at Kip's Wharf.

17. The 2004 JO concludes that "[n]o Act 250 permit is required to implement the changes proposed in your letter." Ex. H at 3.

18. In 2013, Applicant purchased 239 Creek Road.

19. There was an existing marina on 239 Creek Road at the time of purchase, which included sales, service, boat and dock rentals and boat storage. This property also contained a single-family residence.

20. 239 Creek Road's marina and operations predated Act 250 and continued through Applicant's purchase.

21. Applicant uses 239 Creek Road for dock rentals and uses the single-family residence as a rental property.

22. In 2006, Bomoseen Harbor Enterprises, Inc., an entity owned by Robert and Barbara Woodard, purchased 145 Creek Road.

23. 145 Creek Road contained an existing marina at the time of purchase, including boat rentals and storage, sales, service, dock rentals, and a bait and tackle shop. The property also contained a single-family residence.

24. 145 Creek Road's marina and operations predated Act 250 and continued through Bomoseen Harbor Enterprise's purchase.

25. Applicant presently uses 145 Creek Road for boat rentals and storage and uses the single-family residence as a rental property.

26. More than three decades after the unpermitted construction of the additional storage building in 1988 on 615 Creek Road, Applicant submitted an after-the-fact application for a permit amendment for this construction only. The application did not concern the additional access drive constructed at this property, the construction and removal of the tiered storage area, or the paving of graveled drives and areas.

27. The District Coordinator deemed the application incomplete on December 30, 2025.

28. The incomplete decision concluded that the application did not address the additional access drive constructed at this property, the clearing of land to expand storage and parking areas, or the

paving of graveled drives and areas.¹ The District Coordinator therefore concluded that the application needed to be supplemented to include a revised project scope to include these activities.

29. The incomplete determination further concluded, in relevant part, that Applicant needed to include a “master plan” document identifying the 145, 239, and 351 Creek Road properties as well as Kip’s Wharf and containing information set forth in the incomplete determination.

30. Additionally, the incomplete determination concluded that Applicant needed to provide documentation identifying “that uncommon species and both Northern long-eared bat and Tricolored bat are mapped in the area of the boat storage building and ancillary access drive/parking.” Decision at 4.²

31. Applicant timely appealed to this Court.

Discussion

I. Preexisting Status of Additional Properties³

Development that predates June 1, 1970 is a “preexisting development” that is exempt from Act 250 jurisdiction unless there is a substantial change. In re Vt. RSA Ltd. P’ship d/b/a Verizon Wireless, 2007 VT 23, ¶ 8 (2007) (citing 10 V.S.A. § 6081(b)). “Substantial change” is defined as “any cognizable change to a pre-existing development or subdivision which may result in significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10). Act 250 Rule 2(C)(8). A development that “is exempt at one time does not mean it will always be exempt.” In re Orzel, 145 Vt. 355, 361 (1985).

Applicant, the party opposing jurisdiction, bears the burden of proving that the development is preexisting.⁴ In re Vt. RSA Ltd. P’ship d/b/a Verizon Wireless, DR 441, Findings of Fact, Conclusions of Law and Order, slip op. at 5–7 (Vt. Env’tl. Bd. Oct. 20, 2005). If that burden is met, the burden shifts to the LURB, as proponents of jurisdiction, to demonstrate that there has been a “substantial change” to the development on these parcels. Id.

¹ The application also did not address the tiered storage area removed in 2020.

² The District Coordinator’s decision requested additional information that is not the subject of either this appeal, generally, or the pending motions, specifically. Thus, those determinations are not set forth herein.

³ Applicant’s motion addresses the involvement of an additional “unused” parcel adjacent to 615 Creek Road that it asserts is not “involved land.” This parcel is not addressed by Applicant’s Statement of Questions explicitly or intrinsically. Thus, the Court fails to understand how the question of the parcel’s status as involved land is before the Court. In re Garen, 174 Vt. 151, 156 (2002) (addressing how the Statement of Questions limits this Court’s scope of review); In re LaBerge NOV, 2016 VT 99, ¶ 15, 203 Vt. 98 (citing In re Jolley Assocs., 2006 VT 132, ¶ 9, 181 Vt. 190) (allowing this Court to consider matters intrinsic to a Statement of Questions).

⁴ There is no dispute that the development on the additional four parcels would constitute “development” as defined by 10 V.S.A § 6001(3)(A)(i) if built today.

Here, no party disputes that the development on the 145, 239, 351 Creek Road and Kip's Wharf properties each predated Act 250 and is generally marine-related. Nor is there dispute that the development occurred continuously until Applicant's ownership of the parcels.⁵ While there is a dispute as to whether Applicant has altered the development of these properties such that it has undertaken a substantial change to that development, there is similarly no dispute that Applicant currently uses each property's marine-related infrastructure as a part of its marine business operations. Thus, it is undisputed that the development on these parcels are preexisting development, generally. The issue is, therefore, whether those parcels retain their preexisting status.

a. Res Judicata of 2004 JO

Applicant asserts that the 2004 JO concluding that the Kip's Wharf property is a preexisting development means the current after-the-fact application cannot trigger Act 250 jurisdiction over Kip's Wharf as involved land under the doctrine of res judicata. It further argues the same analysis holds for the other three marina properties and as a result the 2004 JO also bars the LURB from asserting those properties are involved land. Because this analysis addresses whether the LURB is precluded from making certain arguments, the Court addresses it first.

Under res judicata, "a final judgment in previous litigation bars subsequent litigation if the parties, subject matter, and cause(s) of action in both matters are the same or substantially identical." Nat. Res. Bd. Land Use Panel v. Dorr, 2015 VT 1, ¶ 10, 198 Vt. 226 (quoting Faulkner v. Caledonia Cnty. Fair Ass'n, 2004 VT 123, ¶ 8, 178 Vt. 51). "The doctrine 'bars parties from relitigating, not only those claims and issues that were previously litigated, but also those that could have been litigated in a prior action.'" Id. (quoting Carlson v. Clark, 2009 VT 17, ¶ 13, 185 Vt. 324).

"Act 250 jurisdictional opinions are final and binding only as to the facts they are based on." In re Laberge Shooting Range JO, No. 96-9-16 Vtec, slip op. at 18 (Vt. Super. Ct. Envtl. Div. Aug. 15, 2017) (Walsh, J.) (citing In re Catamount Slate, Inc., 2004 VT 14, ¶ 20, 176 Vt. 284. As such, a jurisdictional opinion "is only as good as the facts presented to the District Coordinator." Id. (citing In re WhistlePig, LLC Act 250 JO (#9-070), No. 21-2-13, Vtec, slip op. at 11 (Vt. Super. Ct. Envtl. Div. Apr. 11, 2014) (Durkin, J.).

⁵ Applicant initially did not provide material facts or supporting exhibits demonstrating this fact. Applicant subsequently supplemented its filing with an additional statement of undisputed material facts and supporting affidavit of Mr. Robert Woodard. Based on his personal knowledge, the affidavit asserts that the businesses were used continuously until Applicant's ownership. The LURB has not challenged or responded to these facts.

First, because the 2004 JO only concerned the Kip's Wharf parcel, the binding effect of res judicata does not apply to the other parcels. The 2004 JO did not address any of those properties and therefore the doctrine is inapplicable.

Second, the 2004 JO concerns the "relocation of the sales division of Woodard Marina from [615 Creek Road] . . . to [Kip's Wharf]." Ex. H at 1. The District Coordinator concluded that the relocation of this aspect of Applicant's business did not require an Act 250 permit and that "on the facts of this case" Kip's Wharf was to be treated as preexisting "until such time as it is proposed to be substantially changed." *Id.* at 2 (internal quotation omitted). Thus, the acquisition of the property and general operation of the preexisting marina, along with the renovation of Kip's Wharf to include a "small office" did not trigger Act 250 jurisdiction at that time.⁶ *Id.* at 3. Thus, it is clear that the LURB cannot allege that the "renovation" of the office at Kip's Wharf, by itself, triggered jurisdiction.

Further, while the 2004 JO request letter focuses largely on the relocation of the office to Kip's Wharf, the 2004 request letter also clearly contemplates the installation of 30 docks at the property. Based on the representations laid out in its letter, Applicant sought a jurisdictional opinion concluding that there was no need for an Act 250 permit. The 2004 JO concludes that "[n]o Act 250 permit is required to implement the changes proposed in your letter." *Id.* at 3. That the 2004 JO does not spend considerable time discussing the dock installation does not alter the fact that it concludes that this installation, as described in the letter requesting the opinion, did not require an Act 250 permit. The 2004 JO was not appealed and is therefore final and binding even if in error. See 24 V.S.A. § 4472; *Levy v. Town of St. Albans Zoning Bd. of Adjustment*, 152 Vt. 139, 143 (1989)

With respect to additional boat storage at the Kip's Wharf property, the 2004 letter notes that use is preexisting, which the parties do not dispute. It does not, however, address expanded boat storage at Kip's Wharf. While the 2004 request letter states that the "intent is to construct office and storage space" the full sentence reads: "the remainder of the second floor [of the existing building on the property] is unfinished at this time and the intent is to construct office and storage space for the business." Ex. H at 6. This sentence clearly relates to internal storage space for the business on the second floor of the existing building. It clearly does not relate to the construction of additional boat storage space located outside the property's existing building. No aspect of the 2004 request letter

⁶ This conclusion is largely consistent with the Court's decision here. Joint ownership of this parcel did not automatically trigger the need for Act 250 permitting. Instead, some other operational or physical change must occur in order to subject the property to Act 250 jurisdiction.

nor the 2004 JO address expanded boat storage areas at Kip's Wharf. Thus, the LURB may argue that expansions have occurred, triggering the need for Act 250 permitting.

Further, no aspect of the 2004 JO addressed whether the Kip's Wharf operations were sufficiently coordinated with Applicant's jurisdictional business operations so as to trigger the need for Act 250 permitting on the Kip's Wharf parcel. Thus, the LURB may argue that the Kip's Wharf property has lost its preexisting status due to coordinated business operations.

b. Coordinated Operations Between Applicant's Properties

This Court has held that coordinating business operations between permitted development and preexisting development under joint ownership can result in a substantial change to the preexisting development requiring Act 250 permitting. See In re Julian Materials, No. 23-ENV-00043, slip op. at 4 (Vt. Super. Ct. Envtl. Div. Mar. 21, 2024) (Durkin, J.). While joint ownership alone does not constitute a substantial change, certain coordinated operations can constitute such a change. In Julian Materials, this coordination included the trucking of stone between quarries, which impacted Criterion 5 (traffic), for processing on the preexisting quarry, which impacted Criteria 8 (noise and aesthetics) and 9(E) (processing of earth resources). While it is not disputed that Applicant uses these parcels as a part of its marine business, the Court has not been provided with sufficient information regarding how these parcels interact with 615 Creek Road, the jurisdictional parcel, to determine whether the parcels retain their preexisting status or whether there has been a substantial change. Because the LURB has not provided sufficient information for the Court to rule that it is entitled to judgment as a matter of law about whether there has been a substantial change based on coordinated business operations, its motion must be **DENIED** because the LURB has not met its burden to support its motion. It is unclear whether Applicant has moved on this issue and asserted that the businesses are sufficiently distinct so as to not constitute a substantial change. To the extent that it has, however, the Court lacks sufficient facts to make that determination in its favor. Thus, to the extent that Applicant's motion concerns this issue, its motion is similarly **DENIED**.

c. Other Changes at Applicant's Properties

Next, the LURB argues that other non-operational changes at all four parcels independently constitute a "substantial change" triggering jurisdiction. We address each property in turn.

i. **351 Creek Road**

351 Creek Road contained a dock-rental business that predated Act 250 and continued to Applicant's acquisition in 1989. At that time, Applicant replaced the docks on this portion of the property and has not increased the number of spaces beyond the pre-1989 levels. Applicant then

purchased an additional portion of 351 Creek Road in 2001 that contained additional docks and rents those out as well.

“[I]n-kind replacement of existing equipment with substantially similar equipment is not a cognizable change” under the “substantial change” analysis. F.W. Whitcomb Const. Co., DR # 408, Findings of Fact, Conclusions of Law and Order, slip op. at 10 (Vt. Env'tl. Bd. Dec. 19, 2002) (citing In re Tucker, 149 Vt. 551, 555 (1988)). There is no dispute that Applicant replaced the docks. The LURB does not assert that Applicant has expanded the number of docks at 351 Creek Road or that the new docks are not substantially similar to those that were replaced. The material facts are therefore not in dispute and Applicant is entitled to judgment as a matter of law that the replacement of the docks at 351 Creek Road, by itself, is not a substantial change independently requiring an Act 250 permit. Applicant's motion is therefore **GRANTED IN PART** on this discrete issue and the LURB's is **DENIED IN PART** on the same.

ii. 239 Creek Road

239 Creek Road contained a marina with sales, service, boat and dock rentals, boat storage and a single-family residence that predated Act 250. Applicant acquired this parcel and business in 2013 and presently operates dock rentals at the property and rents the single-family home.

As set forth above, the marine-related business, which included dock rentals, predated Act 250 and is a preexisting use that continued through Applicant's ownership. This fact is not disputed. Applicant's continuation of that use does not constitute a substantial change. The LURB has not asserted that Applicant's dock rentals are expanded or somehow different from the dock rentals that preexisted purchase of the parcel.

Further, it is undisputed that the single-family home on the property is now a rental unit. There is no assertion that Applicant physically altered the home in any manner associated with this conversion. Further, there is no assertion that the property's use as a single-family dwelling has been expanded or altered in any way. For example, this is not a case where a single-family dwelling was a seasonal home and is now used year-round. The Court is not aware of any statute, Act 250 rule, or precedent requiring us to distinguish between types of property ownership (i.e., by deed or by lease) when considering Act 250 jurisdiction.⁷ Moreover, the Court has been presented with no argument that the conversion could potentially impact Criteria 1, 5(A) and (B) or 8. First, with respect to

⁷ For example, if a developer sought an Act 250 permit for a jurisdictional housing development, whether those housing units were to be rented or sold outright is not a factor in determining whether the project is jurisdictional. The development's proffered use remains housing whether the units were rented or owned.

Criterion 1, the LURB provides no support for the assertion that this conversion would impact this criteria at all, or if the impact would be for water or air pollution. With respect to Criterion 5, again, there is no difference between traffic generated from a single-family home that is occupied by the property's owner or occupied by a tenant. Similarly, the LURB has not articulated, nor can the Court discern, an aesthetic difference between a single-family home that is owner-occupied and one that is rented.

Thus, the material facts are not in dispute. Applicant is entitled to judgment as a matter of law that the dock rental use and conversion of the single-family dwelling to a rental property alone did not result in a substantial change requiring an Act 250 permit. Thus, Applicant's motion on this issue is **GRANTED IN PART** and the LURB's is **DENIED IN PART**.

iii. 145 Creek Road

145 Creek Road was acquired in 2006 by a business affiliated with Applicant. The parcel contained an existing marina with boat and dock rentals, boat storage, sales, service, a bait and tackle shop and a single-family home. The boat rental and bait shop business predated Act 250. Applicant presently uses the parcel for boat rentals, boat storage, and as a single-family rental unit.

For the reasons set forth above with respect to 239 Creek Road, Applicant's use of the parcel for boat rentals and storage and the conversion of the single-family dwelling to a rental property alone did not result in a substantial change requiring an Act 250 permit. Thus, Applicant's motion on this issue is **GRANTED IN PART** and the LURB's is **DENIED IN PART**.

iv. Kip's Wharf

Kip's Wharf contained a pre-existing marine business that predated Act 250. Applicant acquired the property in 1994. In 2004, Applicant received the 2004 JO concluding that the marine business on the property was preexisting and the relocation of a sales office to the Kip's Wharf parcel and the installation of 30 new docks did not require an Act 250 permit. The LURB appears to assert in its filings that Applicant constructed new boat storage areas beyond the new docks at Kip's Wharf which were, for the reason set forth above, not contemplated by the 2004 JO. The LURB has failed to establish facts related to that alleged expansion in their statement of undisputed material facts. Thus, to the extent that the LURB asserts that there was another expansion of boat storage other than the 30-dock addition, its motion is **DENIED IN PART** on these grounds because there are insufficient facts for the Court to adjudicate whether it is entitled to judgment as a matter of law the issue.

II. Paving of Gravel Surfaces⁸

The parties dispute whether the paving of previously permitted gravel areas at 615 Creek Road, the jurisdictional parcel, is a material change requiring a permit amendment. A “material change” is “any cognizable change to a development or subdivision subject to a permit under Act 250 or findings and conclusions under 10 V.S.A. § 6086b, which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10).” Act 250 Rules, Rule 2(C)(6). A “cognizable change” is “any physical change or change in use, including, where applicable, any change that may result in a significant impact on any finding, conclusion, term or condition of the project's permit.” *Id.* at Rule 2(C)(26).

It is undisputed that the permitted access and parking areas were to be gravel. Areas that were to be gravel are now paved.⁹ The first term of the 1988 permit states that “[t]he project shall be completed as set forth in accordance with the plans and exhibits stamped “Approved” and on file with the District Environmental Commission.” Exhibit 1 at 1. It then goes on to state that “[n]o changes shall be made in the project without the written approval of the District Environmental Commission.” *Id.* The paving of these areas is a “physical change.”

III. The Court has not been presented with sufficient analysis to determine whether this physical change has the potential to significantly impact the prior condition or Act 250 criteria. First, Applicant functionally argues that gravel and paved surfaces are both impervious surfaces for purposes of classification under Agency of Natural Resources (ANR) stormwater permitting, and ANR did not require a stormwater permit for this change, Act 250 is a different permitting regime. While helpful information, ANR's determination that no stormwater permitting was required is not dispositive when determining whether there has been a material change in the Act 250 context. Conversely, the LURB baldly asserts that this change has the potential for significant impacts under Criteria 1, 4, 5, and 8. It fails to provide any understanding of how this physical change

⁸ There is no dispute that the construction of the additional boat storage building in 1988 is a material change. There appears to also be no dispute that the construction of an additional access road in the area to the south of the buildings that was previously identified as a grass area, and expanded storage and parking areas are material changes as well. With respect to the latter, no aspect of Applicant's Statement of Questions appears to assert that these additions and expansions were not material changes.

⁹ The LURB asserts that some areas intended to be grass for drainage are also paved. The Court lacks sufficient facts to determine if this is undisputed. Thus, the Court does not adjudicate whether such a change occurred, generally, or constitutes a material change under Act 250.

could impact these Criteria. Thus, while the material facts are not in dispute, neither party has demonstrated that they are entitled to judgment as a matter of law on the issue of whether the paving of previously-permitted gravel areas has the potential to impact the prior permit and/or Criteria 1, 4, 5, and 8 and therefore constitute a material change. Thus, both parties' motions on this issue are DENIED. **Bat Habitat**

Applicant asserts that it need not submit information related to bat habitat on-site either: 1) because the relevant criterion was not adopted when the at-issue development was constructed in the 1980s; or 2) because there was no available habitat on-site at the time of construction. Both arguments are unavailing.

An applicant "has a vested right to the laws in effect at the time of its original Act 250 permit application." In re Times & Seasons, LLC, 2011 VT 76, ¶ 12, 190 Vt. 163. "These laws include the [Act 250 criteria] . . . in effect at the time," as well as any regulations bearing on the application. See id.; Re: Waterbury Shopping Vill., Inc., No. 5W1068-EB, Mem. of Decision, at 1–2 (Vt. Env'tl. Bd. June 26, 1990) (finding wetland rules inapplicable because they were not in effect when the application was filed). Applicant here would have the Court conclude that a developer has a vested right to laws in effect when the developer violated the terms of its existing Act 250 permit and/or Act 250 generally. This is inconsistent with the vested rights doctrine and would create a perverse incentive for developers to move forward with projects without receiving proper permitting in the hopes of guaranteeing lesser regulatory review of their improper development. This is not Vermont's regulatory system. If a developer wishes to ensure its project is reviewed under a certain set of regulations it is obliged to apply for permitting at the time those regulations are effective. If it does not, the latter application will be subject to the regulations in effect at the time of their subsequent application.

Thus, Applicant is obligated to submit information related to the relevant habitat as required under Criterion 8 and as requested by the District Coordinator. Applicant asserts that there was no such habitat at the time of construction. The required habitat information is necessary as of the time of the application being filed to determine compliance with Criterion 8. Functionally, Applicant argues that its development complies with Criterion 8 because no such habitat existed on-site, and therefore, providing the information is "futile." "Futility" is not a consideration with the relevant application requirements. Applicant is obligated to provide the requisite information for consideration as to

whether the application does or does not comply with the Criterion. Thus, Applicant's motion on this issue is **DENIED** and the LURB's is **GRANTED**.¹⁰

Conclusion

For the foregoing reasons, both Applicant's and the LURB's motions are **GRANTED IN PART** and **DENIED IN PART**. In so ruling, the Court concludes that 351 Creek Road, 239 Creek Road, 145 Creek Road, and 53 East Creek Road contained marine-related businesses and uses as defined herein that predated Act 250 and continued up to and including Applicant's ownership. They are therefore preexisting developments that do not require an Act 250 permit unless a substantial change occurs.

The Court further concludes that there has not been a substantial change at these parcels due to Applicant's replacement of docks, conversion of a single-family dwelling to a rental unit, or individual use of the parcels for those preexisting marine uses as defined herein.

The 2004 JO finally established that relocation of the office and installation of 30 docks at the Kip's Wharf parcel was determined not to require an Act 250 permit and, therefore, no party can assert that these limited activities triggered the need for Act 250 permitting. The 2004 JO has no preclusive or precedential effect on any other parcel, nor does it limit the LURB's ability to assert that other substantial changes triggered the need for Act 250 permitting at the Kip's Wharf parcel.¹¹ For purposes of the motions before the Court, the LURB failed to meet its burden—demonstrating that Applicant's use of these parcels in concert with 615 Creek Road, the jurisdictional parcel, rises to a level of coordinated business operation that would exceed the threshold for substantial change requiring an Act 250 permit, and make these parcels "involved land."

Further, while the Court concludes that the paving of previously-permitted gravel areas is a physical change to the previous permit, both parties have failed to meet their burden for the purposes of this motion to demonstrating they are entitled to judgment as a matter of law as to whether this change has the potential for significant impacts to the prior permit and/or Act 250 criteria.

¹⁰ This issue is addressed in Applicant's Question 6. See Statement of Questions (filed Feb. 13, 2026). Adjudication of this Question functionally also adjudicates Question 5, which addresses what iteration of the Act 250 Criteria are relevant to this application. It also may largely adjudicate Question 7, which relates to Applicant's need to identify impacts to prime agricultural soils that occurred when the development was installed in the 1980s. Applicant did not move on Questions 5 or 7, however. Thus, the Court does not finally adjudicate them here.

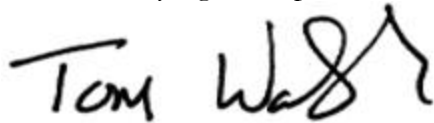
¹¹ This would include the assertion that an additional boat storage area beyond the 30 docks was installed at the Kip's Wharf parcel, to the extent that the LURB asserts such activity occurred.

Further, Applicant's project is required to comply with the criteria in effect at the time of application. Thus, it is required to provide information related to bat habitat as requested by the District Coordinator.

These conclusions do not finally adjudicate all Questions before the Court. Thus, the Court believes trial is required on the coordinated business operations between these parcels to determine whether the additional parcels are "involved land" as addressed by Questions 1 through 4. Further, Applicant did not move on Questions 5, 7, and 8.

The Court will set this matter for a status conference to discuss how to resolve the remaining issues before the Court.

Electronically signed September 14, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" in a cursive script and the last name "Walsh" in a more formal, slightly cursive script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division