



FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

State of Vermont
Land Use Review Board
District 7 Environmental Commission
374 Emerson Falls Road, Suite 4
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<https://act250.vermont.gov/>

Louis Buzzi
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APPLICATION NUMBER:
7C0627-2

LAW/REGULATIONS INVOLVED:
10 V.S.A. §§ 6000 – 6111 (Act 250)

I. INTRODUCTION

On August 2, 2024, Louis Buzzi (“Applicant”) filed with the District 7 Environmental Commission (“Commission”) Act 250 application number 7C0627-2 for construction of an approximately 5,000-square-foot automobile service station and convenience store at 791 Main Street in Lyndon, Vermont (the “Project”). Pursuant to Act 250 Rule 21, only partial findings of fact and conclusions of law for Act 250 criteria 1(D) and 1(E) were requested in the application.

The tract of land for the Project is 3.37 acres (the “Project Tract”).¹ The Applicant’s legal interest is ownership in fee simple as described in a deed recorded in Book 173, Page 256 of the land records of the Town of Lyndon, Vermont (the “Town”).

A hearing on the application initially scheduled for October 9, 2024 was postponed at the request of the Applicant. During the postponement period, the Applicant supplemented their application with revised plans and additional information.

The Commission held a site visit and hearing on the application on July 17, 2025. At the end of the hearing, the Commission recessed the proceeding pending the submittal of additional information and opportunity for parties to submit rebuttal. The Commission adjourned the hearing on October 24, 2025 after completing its deliberations.

As set forth below, the Commission concludes that the Project meets Act 250 Criterion 1(D) in full and Act 250 Criterion 1(E) in part and grants findings under these criteria for 5 years.

II. JURISDICTION

Jurisdiction attaches because the Project constitutes a material change to a permitted development and thus requires a permit amendment pursuant to Act 250 Rule 34.

III. AMENDMENT APPLICATION – RULE 34(E)

The threshold question on an amendment application is “whether the Applicant proposes to amend a permit condition that was included to resolve an issue critical to the issuance of the permit.” Act 250 Rule 34(E)(1). The Applicant does not seek to amend such a condition, so the Commission considers the application without conducting the rest of the Rule 34(E) analysis.

¹ This acreage is based on the Applicant’s representation in Exhibit 001 at 2.

IV. PARTY STATUS AND FRIENDS OF THE COMMISSION

A. Parties by Right

Parties by right to this application pursuant to 10 V.S.A § 6085(c)(1)(A)-(D) are:

The **Applicant** by Louis Buzzi and Jeffrey Olesky, P.E.

The **Vermont Agency of Natural Resources** (“ANR”), through an Entry of Appearance dated July 11, 2025, by Jennifer Mojo, Senior Planner, and through attendance at the hearing by Ms. Mojo and ANR staffers: Rebecca Pfeffer, CFM, State Floodplain Manager and VT NFIP Coordinator; Sacha Pealer, CFM, Northeastern River Scientist and Floodplain Manager; Jud Kratzer, Fish Biologist; and James Brady, Fish Program Manager.

The **Northeastern Vermont Development Association** (“NVDA”), the regional planning commission for Caledonia, Essex and Orleans counties, through appearance at the hearing by David Snedeker, Executive Director.

The **Town of Lyndon Planning Commission**, through appearance at the hearing by Ken Mason and Curtis Carpenter.

B. Interested Parties

Any person who has a particularized interest protected by Act 250 that may be affected by an act or decision of the Commission is also entitled to party status. 10 V.S.A § 6085(c)(1)(E).

1. Preliminary Party Status Determinations

Pursuant to Act 250 Rule 14(E), the Commission made preliminary determinations regarding party status at the commencement of the hearing. The following persons requested party status pursuant to 10 V.S.A § 6085(c)(1)(E) and were admitted as parties as indicated below:

Mark Bean, an adjoining property owner, preliminarily granted party status under Criteria 1(D) and 1(E).

Colby Martino, an adjoining property owner, preliminarily granted party status under Criteria 1(D) and 1(E).

Kurt Nygren, an adjoining property owner, preliminarily granted party status under Criteria 1(D) and 1(E).

2. Final Party Status Determinations

In accordance with 10 V.S.A § 6085(c)(6) and Act 250 Rule 14(E), the Commission reexamined preliminary party status determinations and revises the party status of the following persons:

Mark Bean, party status denied for lack of explanation of particularized interest, as required in the Commission’s July 28, 2025 Hearing Recess Order (“HRO”).

Colby Martino, party status denied for lack of explanation of particularized interest, as required in the HRO.

Kurt Nygren, party status denied for lack of explanation of particularized interest, as required in the HRO.

C. Friends of the Commission

The Commission allowed the following nonparties to participate as Friends of the Commission pursuant to 10 V.S.A § 6085(c)(5):

Nathan Sicard, P.E., CPESC. Mr. Sicard is a civil engineer with water resources expertise and detailed knowledge of the area and a relevant flood reduction study. Exhibit 022.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

These findings of fact are based on the application, Exhibits 001 through 031, and other evidence in the record. Findings made in this decision are not limited to the specific criterion in which they appear and may apply to other sections of the decision.

Under Act 250, projects are reviewed for compliance with the criteria of Act 250, 10 V.S.A § 6086(a)(1) through (10). Before granting a permit, the Commission must find that a project complies with all these criteria and, therefore, is not detrimental to public health, safety, or general welfare. The findings and conclusions herein only pertain to Act 250 criteria 1(D) and 1(E). The burden of proof under Act 250 criteria 1(D) and 1(E) is on the Applicant. 10 V.S.A. § 6088(a).

General Findings:

1. The Project involves the construction of an approximately 5,000-square-foot automobile service station and convenience store, including 8 standard fuel pumps, two diesel fuel pumps, and associated utilities and infrastructure. Exhibits 001 and 004b.
2. The Project Tract is located immediately southwest of the intersection of U.S. Route 5 and State Routes 114 and 122 (the "Main Street Intersection"). It has frontage on U.S. Route 5 and State Route 122. Exhibit 004b.
3. A motel and garage previously existed on the Project Tract. Remnants of the former motel use that exist on the Project Tract today include a paved parking area, gravel drive, foundations, fill, a stone wall, and a water service line. Part of the Sanborn Covered Bridge, not currently in use, is also on the Project Tract. Exhibits 003a and 017.
4. The former motel was torn down pursuant to a Town ordinance related to blighted properties. Hearing Testimony.
5. The Applicant desires to provide vehicular access to and from the Project for standard vehicles and large trucks and tractor trailers. The Applicant proposes to do this by installing one curb cut on U.S. Route 5 and one curb cut on State Route 122. This would allow large trucks to enter at one curb cut and exit at the other. Exhibit 017.
6. The curb cuts must be as far away from the U.S. Route 5/State Route 122 intersection as possible to comply with the Vermont Agency of Transportation Access Management Guidelines. *Ibid.*
7. The Project received conditional use and site plan approval from the Town. Exhibit 018.

Criterion 1(D) - Flood hazard areas; river corridors:

"A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands within a flood hazard area or river corridor will not restrict or divert the flow of floodwaters; cause or contribute to fluvial erosion; and endanger the health, safety, and welfare of the public or of riparian owners during flooding." 10 V.S.A. § 6086(a)(1)(D).

Findings of Fact

8. The Project is in the flood hazard area ("FHA") associated with the Passumpsic River. Exhibits 001, 003a, and 021.
9. "Flood hazard area" is defined as "the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year." See 10 V.S.A § 6001, 10 V.S.A. § 752, and 44 C.F.R. § 59.1.
10. The "base flood" is "the flood having a one percent chance of being equaled or exceeded in any given year." 44 C.F.R. § 59.1.
11. The base flood elevation ("BFE") on the Project Tract is 705.9 feet. Exhibit 017.
12. The "floodway," also known as the "regulatory floodway," is "the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height." 44 C.F.R. § 59.1.
13. The Project involves no physical improvements in the floodway except for the creation of a flood storage area in the vicinity of the former pool and plantings to improve the natural condition of the riparian zone. Exhibits 004b, 005b, and 024.
14. The portion of the FHA outside of the floodway (*i.e.*, the flood fringe) is where most of the physical improvements associated with the Project are proposed, including the store and fueling islands. *Ibid.*
15. The lowest floor of the store would be 2.1 feet above BFE. Exhibit 017.
16. The proposed fueling islands would be at BFE or higher. *Ibid.*
17. Elevating commercial structures at least two feet above BFE and placing fueling pumps at or above BFE are requirements of the Town. *Ibid.*
18. 4,060 cubic yards of fill on the Project Tract is proposed by the Applicant to elevate the store and fueling pumps and to provide the Applicant's desired vehicular access. Of this, 1,810 cubic yards would be cut from within the Project Tract and 2,250 cubic yards would be imported. Exhibit 023.
19. The net amount of fill the Project would remove from the floodway is 750 cubic yards. *Ibid.*
20. The net amount of fill the Project would add to the flood fringe is 2,147 cubic yards. *Ibid.*
21. If the Sanborn Covered Bridge is not reconstructed on the Project Tract, the Applicant estimates that 750 to 1,000 cubic yards of additional flood storage could be provided on the Project Tract. *Ibid.*
22. Floodwater currently flows across the Project Tract. The direction of such flow varies depending on the magnitude of the flood. Hearing Testimony; Exhibits 021 and 027.
23. Floodwater would continue to flow across the Project Tract after the Project is constructed. Such flow is an improvement relative to when the motel was present. Hearing Testimony.

24. The section of the Passumpsic River floodway that the Project is next to is relatively slow-moving during flooding due to its low gradient, as shown in the Town of Lyndon Flood Insurance Study. This is supported by observations of silt deposition in the Project area. Exhibit 031.
25. The Project will implement several floodproofing measures, including double-walled fiberglass underground fuel storage tanks, anchoring underground fuel storage tanks and aboveground liquid propane tanks, water sensors on fuel pump dispensers for immediate shutdown in the event of flooding, solid piping conduit, and fiberglass or epoxy resin coating on all galvanized iron piping and watertight couplings. Exhibit 023.
26. The Applicant has not provided a Project-specific hydraulic analysis that ANR asserts is necessary to ensure neighboring development will not be at greater risk from floodwater displacement. With such modelling, ANR looks for proposals to show no more than a 0.1-foot rise in flood heights and no more than a 0.3-feet per second increase in flood velocities during the base flood. Exhibit 021.
27. Justifications for the 0.1-foot flood height rise and 0.3-feet per second velocity increase thresholds were not provided during the hearing and are not explained in ANR's comments or in the procedure or guidance documents referred to in ANR's comments. Hearing Testimony; Exhibits 021 and 027.
28. The Applicant estimates that Project-associated fill would increase BFE on the property, on average, by 0.005 inches. Exhibits 014 and 017.
29. A Flood Reduction Scoping Study by engineering firm SLR International Corporation (the "SLR Study") was completed in 2025 for the area in the Town between the former Town garage and Vail Dam, including the Project Tract. The SLR Study included hydraulic modelling to better understand flood patterns and analyze potential flood mitigation projects. Exhibit 028.
30. Potential flood mitigation projects evaluated in the SLR Study near the Project include elevating the Main Street Intersection up to three feet, restoring floodplain and installing an overflow culvert on the Project Tract, removing the Sanborn Covered Bridge, replacing the Sanborn Covered Bridge with a different structure, and removing the Sanborn Covered Bridge and fill on the south side of the river. *Ibid.*
31. Elevating the Main Street Intersection would result in no change to the water surface elevation upstream of the Main Street Bridge and at the Mobile Home Park northeast of the Project Tract during the 10-year flood. It would result in a 0.04-foot increase in water surface elevation upstream of the Main Street Bridge and at the Mobile Home Park during the 500-year flood. *Ibid.*
32. Restoring floodplain and installing an overflow culvert on the Project Tract, which involves removal of two to 6 feet of fill, would result in a 0.1-foot reduction in water surface elevation upstream of the Main Street Bridge and at the Mobile Home Park during the 10-year flood. It would result in a 0.3-foot reduction in water surface elevation upstream of the Main Street Bridge during the 500-year flood and a 0.2-foot reduction in water surface elevation at the Mobile Home Park during the 500-year flood. *Ibid.*

33. The Applicant estimates that 10,000 cubic yards of fill would be needed to raise the Main Street Intersection as described in the SLR study. Hearing Testimony.
34. The Applicant estimates that 10,000 cubic yards of material would need to be removed to restore the floodplain on the Project Tract as described in the SLR Study. *Ibid.*
35. The Sanborn Covered Bridge is a constriction causing higher flood levels upstream. Its removal would reduce water surface elevation during floods more than restoration of floodplain on the Project Tract would. Exhibit 028.
36. Kurt Nygren owns land across Route 122 from the Project Tract and supports the Project. Hearing Testimony and Exhibit 003a.
37. Mark Bean, affiliated with adjoining landowner Bean's Mobile Homes, Inc., supports the Project and is confident in the Applicant's calculations regarding flood impacts. *Ibid.*
38. Colby Martino owns land immediately west of the Project and recently elevated his storage units above BFE. He supports the Project and believes the Project's impacts on the floodplain would be negligible. *Ibid.*
39. NVDA supports ANR's request for hydraulic modeling. Hearing Testimony.
40. Part of the Project Tract is in the river corridor as mapped by ANR. Exhibits 001 and 021.
41. The Project has a neutral or positive impact on fluvial erosion because it would pull the footprint of existing development further away from the river. Hearing Testimony.

Conclusions of Law

The Project will involve the development of lands within the FHA and river corridor. However, the Commission concludes that the Project will not restrict or divert the flow of floodwaters; cause or contribute to fluvial erosion; and endanger the health, safety, and welfare of the public or of riparian owners during flooding for the following reasons.

First, the Project will not cause or contribute to fluvial erosion because it moves improvements away from the river and thus enlarges the effective width of the river corridor. The Applicant and ANR agree the Project will not cause or contribute to fluvial erosion.

Second, the Project will not restrict or divert the flow of floodwaters because floodwater will continue to flow across the Project Tract after construction and no physical alterations would be made to the floodway except for a floodwater storage area and revegetation of the riparian zone. Here, the Commission is persuaded by the expert testimony of professional engineers Olesky and Sicard. The Commission observes that not all physical alterations to land that affect the flow of floodwaters "restrict or divert" floodwater flow within the meaning of Criterion 1(D). Were they to, the creation of flood storage areas and riparian reforestation, which affect floodwater flow, would be prohibited by Criterion 1(D).

Third, the Project will not endanger the health, safety, and welfare of the public or of riparian owners during flooding because it: (a) will have an insignificant effect on water surface elevations during the base flood, (b) elevates the lowest floor of the store 2.1 feet above BFE, (c) elevates fueling pumps at or above BFE, (d) incorporates customary floodproofing measures, (e) will make no physical alterations to the floodway except for the floodwater

storage area and revegetation of the riparian zone, (f) will not cause or contribute to fluvial erosion, and (g) the section of the Passumpsic River floodway that the Project is next to is relatively slow-moving during flooding.

In this case, it is reasonable to estimate changes to flood heights as the Applicant has in combination with analyses of nearby potential flood mitigation projects. Taken together, the Applicant's estimates and the modeling results from the SLR Study sufficiently demonstrate to this Commission that the Project's effects on water surface elevation during floods will be so insignificant as to not further endanger the health, safety, and welfare of the public or of riparian owners during flooding. Neither statute nor rule requires the hydraulic analysis recommended by ANR. Justifications for the thresholds ANR's preferred hydraulic analysis evaluates projects against were not provided.

Finally, the Commission observes that the Sanborn Covered Bridge is a constriction causing higher flood levels upstream and its potential replacement constrains the Applicant's ability to create more flood storage and restore more floodplain on the Project Tract. Ideally, the Applicant would have brought the Project forward for findings after plans for the Bridge were finalized and agreed to by the parties involved. If and as Project design and permitting moves forward, the Commission encourages the Applicant to consider creating more flood storage and restoring more floodplain than currently proposed. Provision should be made in any permit issued by the Commission for the Project to enable such activity. This issue is further discussed under Criterion 1(E).

The Project meets Criterion 1(D).

Criterion 1(E) - Streams:

"A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a stream will, whenever feasible, maintain the natural condition of the stream, and will not endanger the health, safety, or welfare of the public or of adjoining landowners." 10 V.S.A. § 6086(a)(1)(E).

Findings of Fact

42. The Project is near the Passumpsic River but does not involve any construction that will disturb the River's banks or bed. Exhibits 001, 004b, and 005b.
43. The Project includes a landscaping and riparian management plan developed with input from ANR that provides for revegetation and protection of the riparian zone. Exhibits 024 and 026.
44. ANR requests, and the Applicant consents to, the following permit condition:

The Permittee shall implement the Proposed Landscaping Plan, Sheet C2.3 rev.9/9/25 (Exhibit # to be determined). Once project and planting activities are complete, except for the areas identified on the Plan where project infrastructure occurs or are encumbered by the right of way easement, the Permittee shall maintain an undisturbed, naturally vegetated riparian zone along the Passumpsic River as identified on the Plan (green shading). The riparian zone shall be measured inland, perpendicular to and horizontally 100-feet from the river top-of-bank and extend to the water's edge. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or

soil compaction, including but not limited to construction; earth-moving activities; storage of materials; tree trimming or canopy removal; tree, shrub, or groundcover removal; plowing or disposal of snow; grazing and mowing. Planting activities shall be completed within three years permit issuance.

Exhibit 026.

45. The Project involves more than one acre of earth disturbance. Exhibit 005b.
46. Erosion prevention and sediment control ("EPSC") notes and details are included on plans submitted with the application but no plan depicting the location of proposed EPSC measures is included. Exhibits 005b and 023.

Conclusions of Law

The Project is adjacent to the Passumpsic River. It will not endanger the health, safety, or welfare of the public or of adjoining landowners because it will not disturb the river's banks or bed, will have an insignificant effect on water surface elevations during the base flood, makes no physical alterations to the floodway except for the floodwater storage area and plantings, and will not cause or contribute to fluvial erosion.

To determine whether the Project will, whenever feasible, maintain the natural condition of the stream, the Commission must consider the construction and operational phases of the Project.

The Project, after construction, will maintain the natural condition of the Passumpsic River because it will not disturb the river's banks or bed, will implement a landscaping and riparian management plan, and will maintain most of the riparian zone in undisturbed and naturally vegetated condition. The Commission will condition any permit issued for the Project as requested by ANR, with one adjustment: the Commission will clarify that the permittee may apply to amend the permit condition to allow for other activities that restore the floodplain or improve natural floodplain functions.

The Commission cannot determine whether the Project will maintain the natural condition of the Passumpsic River during construction because a plan depicting the location of proposed EPSC measures has not been provided. It is clear that the Applicant intends to implement such measures based on plan notes and details. But the Commission cannot determine that the Passumpsic River's natural condition will be maintained without seeing the location of these measures in relation to earth disturbing activities. Regardless, such a plan would be needed to demonstrate the Project will satisfy Act 250 Criterion 4.

Therefore, the Commission concludes that the Project meets Criterion 1(E) in part. To satisfy Criterion 1(E) in full, any future application for a permit must include an EPSC plan that identifies, to the Commission's satisfaction, the location of EPSC measures that would be implemented during construction.

VI. SUMMARY CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes that the Project, if completed and maintained as represented in the application and other representations of the Applicant, and in accordance with the findings and conclusions of this decision, will meet Act 250 Criterion 1(D) in full and Act 250 Criterion 1(E) in part.

VII. ORDER

These Findings of Fact and Conclusions of Law shall remain in effect for a period of five years from the date of this decision. They may be subject to timely application for extension pursuant to Act 250 Rule 35.

Dated this October 27, 2025.

By /s/ Eugene Reid
Eugene Reid, Chair
District 7 Commission

Commissioners participating in this decision: Keith Johnson, Nicole Davignon.

Any party, or person denied party status, may file within 15 days from the date of a decision of the District Commission one and only one motion to alter with respect to the decision, pursuant to Act 250 Rule 31(A). Under Rule 31(A), no party, or person denied party status, may file a motion to alter a District Commission decision concerning or resulting from a motion to alter. Per Rule 31(A)(3), the running of the time for filing a notice of appeal is terminated as to all parties by a timely motion to alter.

Any person aggrieved by an act or decision of a District Commission or District Coordinator, or any party by right, may appeal to the Environmental Division of Vermont Superior Court within 30 days of the act or decision pursuant to 10 V.S.A. § 8504. Such appeals are governed by Rule 5 of the Vermont Rules for Environmental Court Proceedings. The appellant must file a notice of appeal with the clerk of the court and pay any fee required under 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Land Use Review Board and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. The Land Use Review Board's copy may be sent to act250.legal@vermont.gov and/or 10 Baldwin Street, Montpelier, VT 05633-3201.

Note, there are certain limitations on the right to appeal, including on interlocutory appeals. See, e.g., 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5. There shall be no appeal from a District Commission decision when the Commission has issued a permit and no hearing was requested or held, or no motion to alter was filed following the issuance of an administrative amendment. 10 V.S.A. § 8504(k)(1). If a District Commission issues a partial decision under 10 V.S.A. § 6086(b), any appeal of that decision must be taken with 30 days of the date of that decision. 10 V.S.A. § 8504(k)(3). For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.

The foregoing statements regarding motions to alter and appeals are intended for informational purposes only. They neither supplant nor augment any rights or obligations provided for by law nor do they constitute a complete statement of the rights or obligations of any person or party.

CERTIFICATE OF SERVICE

I hereby certify that I, Gina St. Sauveur, Land Use Review Board Technician, District 7 Environmental Commission, sent a copy of the foregoing **Findings of Fact and Conclusions of Law #7C0627-2** by U.S. Mail, postage prepaid, on this October 27, 2025 to the following individuals without email addresses and by electronic mail, to the following individuals with email addresses:

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.

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A handwritten signature in black ink, appearing to read "Gina St. Sauveur", written over a horizontal line.

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