

November 19, 2025

Julie Moore
Secretary, Vermont Agency of Natural Resources (ANR)
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

Kerrick Johnson
Commissioner, Vermont Department of Public Service (DPS)
112 State Street
Montpelier, VT 05602

Janet Hurley
Chair, Vermont Land Use Review Board (LURB)
10 Baldwin Street
Montpelier, VT 05633-3201

VIA ELECTRONIC MAIL

Re: Executive Order 06-25

Dear Secretary Moore, Commissioner Johnson and Chair Hurley:

The Vermont Natural Resources Council (VNRC), Conservation Law Foundation (CLF), Sierra Club, Vermont Chapter, Vermont Public Interest Research Group (VPIRG) and the American Civil Liberties Union (ACLU) of Vermont are writing to address your agencies' solutions to resolve the housing response to our October 15, 2025 request for a determination that your agencies do not have the authority to implement certain provisions of Executive Order 06-25 (EO). We appreciate the responses that we have received from ANR and the LURB and the tacit and explicit acknowledgment in those responses that the agencies do not have the authority to implement certain provisions of the EO. We stand ready to meet with and work with you to continue developing meaningful solutions to the housing crisis that comport with the law. As set forth below, we still request answers to the specific questions raised in our October 15th request that ANR and the LURB have not addressed and, which the DPS has failed to respond to by **December 3, 2025**.

DPS Implementation of EO 06-25

DPS has not responded to our request for a determination that it does not have the authority to implement certain provisions of Executive Order 06-25 (EO). Accordingly, we reiterate our request of the DPS set forth in our October 15th letter. In addition, we request that DPS indicate

whether it is currently implementing EO Section 1.1 that would amend the regulations regarding residential and commercial energy efficiency standards. As set forth in our October 15th letter, amending its energy efficiency regulations without following the rulemaking process, at a minimum, violates the Vermont Administrative Procedure Act (APA). See 3 V.S.A. § 817 *et seq.* Moreover, if DPS is implementing EO Section 1.1, we demand that DPS cease doing so immediately. Furthermore, we request that DPS set forth the statutory authority for it to convert the 2024 energy efficiency standards into voluntary standards, as directed by the EO, without following the APA’s rulemaking process.

ANR’s Implementation of EO 06-25

In its response to our October 15th request, ANR directed us to the Initial DEC Implementation Guidance. Specifically, ANR Secretary Julie Moore stated in an email response to our groups:

I am writing on behalf of ANR regarding the wetlands portion of Executive Order 06-25 (EO). The Agency posted guidance regarding the EO on our website on October 14, 2025. You can find the guidance is on this page: <https://dec.vermont.gov/welcome-commissioners-office/executive-order-06-25> As set forth in the guidance, the Agency will be engaging in rulemaking, in accordance with 3 V.S.A. Chapter 25.

As noted, we appreciate that ANR acknowledges that rulemaking is required to implement the provisions of the EO that weaken protections for wetlands. However, we note that questions remain regarding the authority of ANR to weaken protections for wetlands without amending the wetland protections that were enacted by the Vermont Legislature and are set forth in Title 10, Chapter 37. We will be addressing these concerns through the rulemaking process.

In addition, the Interim DEC Implementation Guidance provides that with regard to changes in fees as required in EO Section 2.2, ANR will propose changes to fees to the Secretary of Administration. The Interim DEC Implementation Guidance further provides that “fee changes may require legislative action.” Again, while we appreciate that ANR is acknowledging questions regarding the authority of the Governor to alter fees in the EO, we request a definitive determination from ANR on whether the Governor has the authority to alter fees without legislative approval.

As noted in our October 15th letter, EO Section 2.1 provides that ANR (and other agencies, departments and boards with a majority of members appointed by the Governor):

[I]ssue decisions within 60 days of hearing completion for housing - including, but not limited to, mobile home projects, shelter projects, and mixed-use projects.

The Interim DEC Implementation Guidance states that in implementing this part of the EO, ANR may not be able to complete the review of certain permits in 60 days and states that “[A]pplicants should be aware that substandard or incomplete applications may be denied rather than held in an extended review process.” We interpret this statement as an acknowledgement

by ANR that the Governor does not have the authority in the EO to demand that permits be issued by ANR if a permit review takes longer than 60 days. Please confirm that the Governor lacks the authority to require that permits be deemed approved after 60 days from the date a permit application is determined by ANR to be complete and that ANR will not issue permits as deemed approved if a permit review is not completed in 60 days.

LURB Implementation of EO

In its response to our October 15th letter, the LURB provided a copy of a September 23, 2025 memorandum from the LURB to the Office of the Governor (Memorandum). With regard to implementing the EO provisions on residential and commercial energy codes, the Memorandum requests the following clarification from the Office of the Governor:

Does the statutory language requiring “the most recent version of the [standards]” preclude application of the 2020 RBES and CBES (including stretch code)?

We request that you please provide us with any response to this request for clarification from the Office of the Governor. In addition, we request the LURB’s opinion on whether it has the authority to implement this provision of the EO.

EO Section 2.1 provides that for certain projects, District Commissions allow applicants to obtain other permits as a condition of an Act 250 permit. Specifically, the Memorandum states:

There is a potential statutory conflict if the intent of the order is to issue Act 250 permits where future acquisition of other agencies’ permits is a condition of the permit. Please note, unlike the Land Use Review Board, the Public Utilities Commission has explicit authority to issue permits contingent upon obtaining related permits.

We appreciate the acknowledgement by the LURB that the Governor may not have the authority to require that District Commissions allow applicants to obtain other permits as a condition of an Act 250 permit without statutory change. Please provide us with any response from the Office of the Governor to the LURB’s question about its authority to implement this provision of the EO.

In addition, please address the arguments in our October 15th letter that the Governor does not have the authority to order District Commissions to issue permits after 60 days if the review of an application is not complete and our argument that the Governor does not have the authority to direct how the District Commissions and the LURB as quasi-judicial and independent bodies respectively must process permits and/or administer the Act 250 program.

Finally, we appreciate the LURB’s acknowledgement in its Memorandum that fees cannot be altered without legislative approval. Please provide any response from the Office of the Governor to the LURB’s conclusion the Governor does not have the authority to order changes to fees via the EO.

Again, our groups stand ready to continue to work with you, others in the Administration, and the Vermont Legislature on solutions to resolve the housing crisis plaguing Vermonters as we have over the last several Legislative Sessions and through VNRC’s decades long work

strengthening Vermont communities. We look forward to your response on or before **December 3, 2025**.

Sincerely,

Jon Groveman, Esq., Policy and Water Program Director
Vermont Natural Resources Council

Lauren Hierl, Executive Director
Vermont Natural Resources Council

Elena Mihaly, Esq., Vice President for Vermont
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Paul Burns, Executive Director
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Robb Kidd, Chapter Director
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