



April 22, 2024

***SUBMITTED VIA EMAIL***

Governor's Environmental Justice Advisory Council

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Pamela B. Cashwell  
Secretary, Department of Administration  
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**Re: Comments in Response to the Department of Administration's Draft Environmental Justice Goals and Measurable Outcomes**

Dear Environmental Justice Advisory Council Members and Secretary Cashwell:

On behalf of West End Revitalization Association, 7 Directions of Service, NC FIELD, Inc., Winyah Rivers Alliance, North Carolina Environmental Justice Network, NC Black and Green Network, The Lilies Project, Duplin County Branch of NAACP, Neighbors for Better Neighborhoods, Environmental Justice Community Action Network, North Carolina NAACP, Emancipate NC, Down East Coal Ash Environmental & Social Justice Coalition, NC Sierra Club, CleanAIRE NC, Toxic Free NC, McDowell Local Food Advisory Council, Danielle Koonce, UNC Environmental Justice Action Research Clinic, Wake Forest Environmental Law and Policy Clinic, North Carolina Sustainable Business Council, Dogwood Alliance, Center for Biological Diversity, and North Carolina Conservation Network, Southern Coalition for Social Justice and the Southern Environmental Law Center submit the following comments on the draft Environmental Justice Goals and Measurable Outcomes of the North Carolina Department of Administration. On October 24, 2023, Governor Roy Cooper signed Executive Order 292: Advancing Environmental Justice for North Carolina ("EO 292").<sup>1</sup> Section 7 of the order directed each cabinet agency to develop and submit to the Governor's

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<sup>1</sup> See Office of Governor Roy Cooper, Exec. Order No. 292, Advancing Environmental Justice for North Carolina (Oct. 24, 2023), <https://governor.nc.gov/executive-order-no-292/open>.

Environmental Justice Advisory Council (“EJAC”) for public comment, at least three draft environmental justice goals and measurable outcomes (“EJ goals”).<sup>2</sup>

We appreciate the opportunity to engage with the Department of Administration (“DOA” or “Department”) and the efforts of the Department to further engage in this important work. We would encourage the Department to modify its proposal. The current version is substantially lacking measurable metrics, deadlines, desired outcomes, or specificity. This is concerning because of the Department’s important charge to “manage[] many of the state's advocacy programs that provide assistance and services to diverse segments of the state's population that have been traditionally underserved.”<sup>3</sup> Among these advocacy programs are the North Carolina Commission on Indian Affairs, the NC Council for Women and Youth Involvement, and the Office for Historically Underutilized Businesses, each of which has key roles to play in advocating for consideration of environmental justice communities (“EJ communities”) in state policy.<sup>4</sup>

Below we address the many ways the Department’s EJ goals could be improved to better serve EJ communities in North Carolina. We have also provided expanded and alternate goals and measured outcomes that will better serve EJ communities while remaining grounded in the existing statutory authority of the DOA. We hope that you will take those alternate goals into consideration.

**I. The Department’s existing environmental justice goals should include more specificity, concrete timelines, measurable outcomes, and community feedback mechanisms.**

**A. *Instead of informing marginalized communities about environmental justice issues, the Department’s first goal should be to solicit feedback from EJ communities so that DOA can better understand how its work intersects with environmental justice.***

The DOA’s first draft goal, to “[i]nform marginalized communities about EJ issues and encourage the adoption of EJ practices and initiatives on a quarterly basis,”<sup>5</sup> reveals the Department’s lack of understanding of environmental justice and how its work affects EJ communities. By way of remedy, the Department should start with the basic tenet that people are the experts in their own lived experience. The Department should, therefore, conduct public outreach and community engagement to explain its agency

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<sup>2</sup> *Id.* § 7.

<sup>3</sup> *About DOA*, DEP’T OF ADMINISTRATION, <https://www.doa.nc.gov/about-doa> (last visited Apr. 22, 2024).

<sup>4</sup> *Tri-Fold Brochure*, DEP’T OF ADMINISTRATION, <https://www.doa.nc.gov/tri-fold-brochure-2022-1pdf/download?attachment> (last visited Apr. 22, 2024).

<sup>5</sup> *Environmental Justice Goals*, N.C. DEP’T OF ADMINISTRATION (last visited Apr. 22, 2024), <https://governor.nc.gov/administration-environmental-justice-goals/download?attachment>.

mission to EJ communities and invite their input in how its work can be more inclusive and serve to remedy historic injustices and disparate impacts burdening these communities. This goal should be revised accordingly and should include a plan for developing a programmatic assessment, complete with public engagement, of how its activities intersect with environmental justice concerns. The revised goal should include a concrete timeline and logistical details for its plan of engagement.<sup>6</sup>

If DOA elects instead to keep the structure of its first draft goal as-is, it must specify its meaning in greater detail, as well as how and when its outcomes will be achieved and measured. For instance, Goal 1(a) states that EJAC materials and DEQ materials will be used, but it does not state which materials or how they will be used;<sup>7</sup> Goal 1(b) potentially elaborates upon this, referencing a “one-pager” that will be distributed through the Historically Underutilized Businesses (“HUB”) and Commission of Indian Affairs databases,<sup>8</sup> but, leaving aside that environmental justice issues are far more complex than a “one pager” would be able to cover, this objective fails even to identify what the “one-pager” is referring to. Identifying this document by title and reference location and explaining how distributing it will benefit EJ communities are necessary to make these draft goals actionable and meaningful. If the one-pager is to be distributed through social media, DOA could identify dates that it will schedule to distribute this one-pager through social media posts or existing databases.

Moreover, given DEQ’s tendency to ignore the discriminatory effects of its own permitting decisions and reluctance to address cumulative impacts, it would be preferable if DOA avoided further distribution of DEQ-generated materials and, alternatively, issued information derived from more robust, credible sources of environmental justice. Rather than informing communities about the harms they are already experiencing, it would be more useful if DOA adopted a goal of disseminating information about threats to EJ communities (relevant projects and permits, for example), along with opportunities for engagement in policy development and grant availability instead. These alterations would create measurable and meaningful outcomes that are more aligned with the Executive Order’s requirements.

***B. The DOA’s second draft goal of “further enhancing” community engagement and decision-making falls short of Executive Order 292’s vision for EJ communities.***

The second goal of ensuring “meaningful” participation of EJ communities in environmental decision-making through established boards and commissions<sup>9</sup> is

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<sup>6</sup> EO 292.

<sup>7</sup> See Environmental Justice Goals, *supra* note 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

neither a measured goal, nor is it sufficiently detailed regarding how DOA will alter its existing practices to engage EJ communities.

EJ communities are excluded systemically and procedurally from participating in and engaging with existing boards and commissions, so a suggestion to increase engagement without any current baseline reference point or any concrete steps to enhance participation renders this goal devoid of meaning. If the DOA wishes to keep the substance of its proposed second goal, certain changes need to be added. For example, identifying feedback mechanisms for better engagement is key. DOA should identify key boards and commissions where it would initiate this work, such as the Commission on Indian Affairs, the North Carolina Council for Women, or the Council for Historically Underutilized Businesses. Another option is for existing boards and commissions to conduct more meetings within EJ communities, with best practices to encourage public participation. DOA should also identify how and on what issues it intends to engage EJ communities. In short, DOA must add substance and many more details to this draft goal to make it meaningful and actionable.

***C. The DOA's third goal of improving accessibility is the most specific and measured of its draft proposals but would benefit from an increased focus on environmental justice, including accessibility for those with limited internet connectivity.***

The goal of improving DOA's website accessibility requires a greater focus on environmental justice to serve as one of the measured goals for EO 292. Goal 3(a) states that the DOA will make their website more accessible to individuals with visual impairments and intellectual or developmental disabilities.<sup>10</sup> Arguably, the DOA already has this duty to make their website accessible under the Americans with Disabilities Act,<sup>11</sup> so this would not be a new goal developed under the authority of EO 292. Goal 3(b) simply states that the DOA will maintain oversight over an existing tool that allows users to press "Select Language" to view the DOA website in other languages.<sup>12</sup> DOA should specify which languages are available and how it plans to promote language accessibility, not only through its website, but as appropriate for other publications as well.

As part of its accessibility efforts, DOA should also ensure its sites are accessible for: people using mobile phones, tablets, and other small devices; older people with

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<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., *Do State and Local Government Websites Have to be Accessible*, BUREAU OF INTERNET ACCESSIBILITY (Apr. 25, 2019), <https://www.boia.org/blog/do-state-and-local-government-websites-have-to-be-accessible>.

<sup>12</sup> Environmental Justice Goals, NORTH CAROLINA DEP'T OF ADMINISTRATION, <https://governor.nc.gov/administration-environmental-justice-goals/download?attachment> (last visited Apr. 22, 2024).

disabilities and lack of technological familiarity; situational limitations such as an environment where audio play is not feasible; individuals with Limited English Proficiency; and people using a slower internet connection or who have limited or expensive bandwidth, as is true for many rural EJ communities.

**II. The DOA has the ability to enact meaningful change in EJ communities including, but not limited to, the alternate goals identified below.**

As noted above, we have identified additional areas where the Department has the authority and ability to meaningfully improve EJ communities. As a department, whose mission is to enhance the lives of North Carolinians through government support, the DOA's operations are broad-reaching. Accordingly, we hope you will take these alternate goals into consideration and continue to seek out environmental justice opportunities beyond the requirements of EO 292.

**A. *DOA could create policies for proactive outreach by the Historically Underutilized Businesses program to improve its visibility and impact among EJ communities.***

Pursuant to N.C. Gen. Stat. § 143-48.4, DOA has the power, authority, and duty to administer and develop rules for a statewide program for historically underutilized businesses ("HUBs"), as defined in N.C. Gen. Stat. § 143-128.4.<sup>13</sup> HUBs are listed on the statewide HUB Vendor Link System, which governments and institutions use to increase the amount of goods and services acquired from HUBs.<sup>14</sup> HUB membership also provides certified businesses with workshops, networking opportunities, and trainings.<sup>15</sup>

The Office for Historically Underutilized Businesses offers assistance with online vendor registration for prospective HUBs,<sup>16</sup> but the existing network of HUBs in North Carolina shows a disappointing rate of HUB registration across the state.<sup>17</sup> For instance, Durham County in central North Carolina has 392 HUB-certified businesses, whereas Sampson County in eastern North Carolina has only 21 HUB-certified businesses (about one-nineteenth the number of those registered in Durham County);<sup>18</sup> this cannot be attributed to population alone, as Durham currently has a population of approximately 338,000 people, whereas Sampson County has about one-sixth of that population at

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<sup>13</sup> N.C. GEN. STAT. § 143-48.4 (2009).

<sup>14</sup> *About HUB*, NORTH CAROLINA DEP'T OF ADMINISTRATION, <https://www.doa.nc.gov/divisions/historically-underutilized-businesses-hub/about-legislation> (last visited Apr. 22, 2024).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See How to Find Historically Underutilized Businesses*, DEP'T OF ADMINISTRATION, at 8, <https://www.doa.nc.gov/how-find-hub-vendors-2022/open> (last visited Apr. 22, 2024); see also *Historically Underutilized Businesses*, NC HUB COALITION, <https://www.nchubcoalition.com/> (last visited Apr. 22, 2024).

<sup>18</sup> Vendor Search, EVP, <https://evp.nc.gov/vendors/> (last visited Apr. 22, 2024).

59,000 people.<sup>19</sup> Compare this with Rutherford County in western North Carolina, which has approximately 65,000 residents and only 8 HUB-certified businesses.<sup>20</sup>

This discrepancy demonstrates the need for increased HUB engagement throughout North Carolina to ensure environmental justice communities are not excluded from growth opportunities. Proximity to State central offices should not be the primary determining factor of HUB engagement, as the office’s mission is “[t]o promote economic opportunities for historically underutilized businesses in state government contracting and procurement that will foster their growth and profitability”<sup>21</sup> and arguably the most underutilized businesses in North Carolina are in rural areas in Eastern and far Western parts of the State. This growth potential should be distributed throughout the state, and the discrepancy of HUB-certified businesses in other parts of North Carolina demonstrates the need for increased HUB program engagement.

There are several additional goals that DOA could adopt that would facilitate the much-needed equitable growth of the HUB program throughout North Carolina, keeping in mind the need to identify which North Carolina counties are disproportionately excluded from the HUB program. The Department may identify and conduct outreach to HUBs capable of contributing to projects that mitigate disparate exposures in EJ communities. Second, the DOA should plan outreach events in the counties least served by the program to explain the benefits of certification and walk potential registrants through the process. To ensure that this goal is measurable, DOA should specify a certain number of counties for its preliminary outreach efforts. As stewards of the HUB program, the Department has the authority to conduct such outreach events, and the HUB program has the duty to foster the growth and profitability of historically underutilized businesses across the state.<sup>22</sup> These next steps for the HUB program may help businesses in EJ communities flourish, and we further recommend any additional steps the DOA may take to improve the HUB program.

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<sup>19</sup> *North Carolina Counties*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/states/north-carolina/counties> (last visited Apr. 22, 2024).

<sup>20</sup> *See Rutherford County*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/rutherfordcountynorthcarolina/PST045223> (last visited Apr. 22, 2024); *Vendor Search*, N.C. ELECTRONIC VENDOR PORTAL, <https://evp.nc.gov/vendors/> (last visited Apr. 22, 2024).

<sup>21</sup> *About HUB*, NORTH CAROLINA DEP’T OF ADMINISTRATION, <https://www.doa.nc.gov/divisions/historically-underutilized-businesses-hub/about-legislation>.

<sup>22</sup> *Id.*

***B. DOA should investigate how to achieve environmental goals for inclusion in its annual Climate Strategy Reports.***

Executive Order 80 requires Cabinet agencies to submit annual reports to the Governor detailing the implementation of environmental goals.<sup>23</sup> Each North Carolina agency, including DOA, has combined the annual reporting requirements of Executive Order 80, Executive Order 246, and the Climate Risk Assessment and Resilience Plan into one annual report that details the agency's progress towards environmental goals.<sup>24</sup>

The past two DOA annual reports detail the progress the Department has made towards environmental justice. The most recent DOA reports states that a number of environmental justice goals are “not applicable to NCDOA.”<sup>25</sup> These goals include:

- Goal 1.2 - Support the use and expansion of energy efficient and clean energy resources;
- Goal 1.3 - Increase the number of registered Zero Emission Vehicles to at least 1,250,000 by 2030 so that 50% of in-state sales of new vehicles are zero-emission by 2030;
- Goal 1.5 – Initiate other initiatives to decarbonize the transportation sector;
- Goal 1.6 – Initiate other projects aimed at reducing statewide greenhouse gas emissions;
- Goal 2.1 – Evaluate the impacts of climate change on the NC Department of Administration's programs and operations;
- Goal 2.3 – Assist the communities served by NC Department of Administration to implement climate change adaptation practices and resiliency planning;
- Goal 2.4 – Help complete initiatives in the Natural and Working Lands Action Plan;
- Goal 2.5 – Initiate other projects aimed at increasing statewide resilience to the impacts of climate change;
- Goal 3.1 – Increase understanding and awareness of the health impacts of climate change;
- Goal 3.2 – Advance health equity;

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<sup>23</sup> Office of Governor Roy Cooper, Exec. Order No. 80, North Carolina's Commitment to Address Climate Change and Transition to a Clean Energy Economy (Oct. 29, 2018), <https://governor.nc.gov/documents/files/executive-order-no-80-north-carolinas-commitment-address-climate-change-and-transition-clean-energy/open>.

<sup>24</sup> See *Climate Strategy Reports*, N.C. DEP'T OF ENV'T QUALITY, <https://www.deq.nc.gov/energy-climate/climate-change/nc-climate-change-interagency-council/climate-strategy-reports#2022-11687> (last visited Apr. 22, 2024).

<sup>25</sup> 2023 CLIMATE STRATEGY REPORT, NORTH CAROLINA DEP'T OF ADMINISTRATION, <https://www.deq.nc.gov/climate/ncdoa-climate-strategy-report-2023/download?attachment> (last visited Apr. 22, 2024).

- Goal 3.3 – Initiate other projects aimed at addressing the public health impacts of climate change;
- Goal 4.1 – Increase affordability for low- and moderate-income households.<sup>26</sup>

Though some of these goals may not be as applicable to the Department as to other agencies, the majority of these goals are indeed within the Department’s authority and applicable to DOA. The Department should study how the DOA could achieve these goals by late 2024 and include the results of this research in its 2024 annual report.

***C. The DOA should continue its ongoing engagement with the Commission of Indian Affairs and be more proactive in inviting proposals for environmental justice priorities and engagement from the Tribes.***

The North Carolina State Commission of Indian Affairs (“the Commission”) was created in 1977 for the purpose of “dealing fairly and effectively with Indian affairs,” among other enumerated purposes.<sup>27</sup> Importantly, the Commission is “administered under the direction and supervision of the Department of Administration.”<sup>28</sup>

Accordingly, as one of its EJ goals, DOA should invite proposals from individual Tribes and the Commission of Indian Affairs on environmental justice priorities that the Department should commit to considering in future policymaking. There is a lack of engagement of Tribal governments and leaders on environmental and environmental justice issues across the board, so DOA should develop a tribal consultation policy to inform and precede state agency decisions impacting tribal lands to help advance the meaningful involvement of Indigenous people in state agency decision-making. For example, recent permitting approvals for developments in Person and Alamance Counties have potential impacts on Tribal artifacts and sites of significance, but there has been no direct consultation on these matters.<sup>29</sup> To the extent that it is within the authority of the Commission and of DOA, these bodies could make recommendations to other state agencies like the Department of Environmental Quality and local governments for greater efforts toward proper consultation and accountability. These problems are also pervasive within projects under the DOA’s authority, and the Department should commit itself to true and proper consultation with tribal leaders in all

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<sup>26</sup> *Id.*

<sup>27</sup> N.C. GEN. STAT. § 143B-404 (1977); N.C. GEN. STAT. § 143B-405 (1977).

<sup>28</sup> N.C. GEN. STAT. § 143B-404 (1977).

<sup>29</sup> See Tammy Grubb, *Buc-ee’s finally has a store approved in North Carolina. Here’s what you need to know.*, NEWS & OBSERVER (Jan. 11, 2024, 8:43 PM), <https://www.newsobserver.com/news/business/article284076108.html>; Letter, Dominion Energy to NCDEQ, Re: Environmental Justice Report – Moriah Energy Center, Permit Application 7300086.23A, at 9 (Sept. 25, 2023), <https://edocs.deq.nc.gov/AirQuality/DocView.aspx?id=450859&dbid=0&repo=AirQuality&cr=1>.

policymaking efforts that may have impacts on Indigenous people and heritage. These recommendations should be made after soliciting comments on best practices from Tribes and Tribal communities.

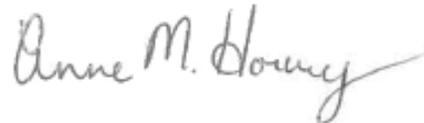
As with all EJ goals promulgated pursuant to EO 292, this invitation to the Commission and anticipated feedback periods should have specified timeframes and metrics to measure success.

In conclusion, the Department's draft goals fail to capture the needs of EJ communities. The Department should take this opportunity to adopt the alternate goals provided for the benefit of EJ communities, as the Department has broad authority to enact meaningful change; we welcome further discussion of how to best incorporate these alternate goals for the benefit of EJ communities.

Sincerely,

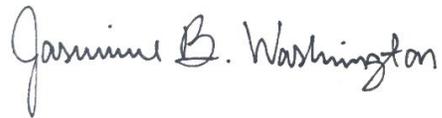
A handwritten signature in black ink, appearing to read "James Huey", with a large, sweeping flourish at the end.

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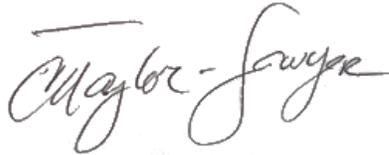
A handwritten signature in black ink, appearing to read "Anne M. Harvey", with a long, sweeping flourish extending to the right.

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