



April 22, 2024

***SUBMITTED VIA EMAIL***

Governor's Environmental Justice Advisory Council

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Eddie M. Buffaloe, Jr.  
Secretary, Department of Public Safety  
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**Re: Comments in Response to Department of Public Safety's Draft Environmental Justice Goals and Measurable Outcomes**

Dear Environmental Justice Advisory Council Members and Secretary Buffaloe:

On behalf of Down East Coal Ash Environmental and Social Justice Coalition, Partners for Environmental Justice, West End Revitalization Association, 7 Directions of Service, Danielle Koonce, NC FIELD, Inc., North Carolina Environmental Justice Network, Warren County Environmental Action Team, Inc., Neighbors for Better Neighborhoods, Environmental Justice Community Action Network, McDowell Local Food Advisory Council, Winyah Rivers Alliance, North Carolina Sustainable Business Council, NC Sierra Club, CleanAIRE NC, Toxic Free NC, The Lilies Project, North Carolina NAACP, Duplin County Branch of NAACP, Emancipate NC, Dogwood Alliance, Center for Biological Diversity, UNC Environmental Justice Action Research Clinic, Wake Forest Environmental Law and Policy Clinic, and North Carolina Conservation Network, the Southern Coalition for Social Justice and Southern Environmental Law Center submit the following comments on the draft environmental justice goals and measurable outcomes of the North Carolina Department of Public Safety. 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 Environmental Justice Advisory Council ("EJAC") for public

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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>.

comment at least three draft environmental justice goals and measurable outcomes (“EJ goals”).<sup>2</sup>

Below, we address the strengths of the proposed goals<sup>3</sup> and some ways that we believe they could be improved to better serve environmental justice communities (“EJ communities”) in North Carolina, which we hope you will take into consideration. We have also provided some alternate goals and measured outcomes that we believe will better serve EJ communities based on the existing statutory authority of the Department of Public Safety (“DPS” or “Department”). We hope that you will take those alternate goals into consideration.

**I. The Department’s Draft Environmental Justice Goals propose achievable actions with aggressive timelines, but these goals should include affirmative efforts to solicit community feedback.**

DPS’s thoughtful draft Environmental Justice Goals and Measured Outcomes (“draft goals” or “EJ goals”) generally seem to embrace effective methods for engaging EJ communities. The timelines in the Department’s goals are among the most ambitious of any agency, which demonstrates the Department’s earnest efforts to combat environmental injustices. However, setting further benchmarks and soliciting community feedback at every step of the process could further improve these goals.

Moreover, while the Department’s draft goals focus on the most obviously environmental elements of DPS’s mission, we would urge DPS to integrate EJ goals throughout all divisions. A more detailed discussion of how DPS might implement this recommendation occurs in our feedback on Goal 1 and in our analysis of additional goals DPS may wish to consider.

**A. *The Department’s first goal to integrate environmental justice principles into DPS policy requires additional benchmarks for accountability and community feedback to identify problematic policies.***

The Department’s first draft goal is to “[i]ntegrate the application of EJ principles within DPS policies and procedures.”<sup>4</sup> This goal, along with all other DPS goals, contains aggressive timelines and subgoals.<sup>5</sup> Indeed, the first subgoal, 1.1, provides for the creation of an environmental justice workgroup to guide policy review and make

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<sup>2</sup> *Id.* § 7.

<sup>3</sup> See N.C. Dep’t of Pub. Safety, Draft Environmental Justice Goals (Feb. 23, 2024), <https://governor.nc.gov/public-safety-environmental-justice-goals/download?attachment> [hereinafter DPS Draft EJ Goals].

<sup>4</sup> See *id.* at Goal 1.

<sup>5</sup> See *id.* (setting forth deadlines from early April to August 2024).

recommendations to DPS leadership on incorporating environmental justice principles by April 1, 2024, well before the Governor's Environmental Justice Advisory Council will have made its own recommendations and before these comments are received. Those recommendations could, therefore, be included in DPS's final EJ goals published pursuant to EO 292. Alternatively, DPS could delay the final integrations of the environmental justice workgroup's recommendations until June 1, 2024, in order to solicit public input on the proposed recommendations.

Similarly, we encourage the Department to actively solicit community input and engagement in this integration process. A key aspect of environmental justice is improved access to systems and decision-making processes where EJ communities have been historically excluded and suffered disparate impacts as a result of that exclusion. Subgoal 1.2 requires the implementation of staff outreach and the development of a pilot training program on how environmental justice relates to public safety. The proposed deadline here of August 31, 2024, allows for ample time to engage impacted communities. Additionally, environmental justice training should include at least one in-person session facilitated by an impacted community member.

Moreover, the Department should clarify that Goal 1.2 includes staff training on how environmental justice is enmeshed in each of the Department's disparate Divisions, from more obvious Divisions like Emergency Management and the Office of Recovery and Resiliency to Administration, State Highway Patrol, and Juvenile Justice. Environmental justice should be woven into the work of each Division of the Department rather than tacked on as an afterthought or isolated to those aspects of DPS's mission where environmental injustices are most apparent, such as in the case of EJ communities being disproportionately located in hazard-prone areas.

The Department's environmental justice trainings should also include the voices of EJ community members. Environmental justice training should be more than online modules, void of human interaction. The lived experience of community members would provide valuable perspective to DPS staff. DPS staff could learn, face-to-face, from the individuals bearing the burden of environmental injustice. DPS's environmental justice trainings should include at least one in-person session facilitated by EJ community members.

Finally, while the Department's proposed timelines are laudable, we suggest that the Department include additional benchmarks to ensure its subgoals are met. For example, the staff outreach and pilot training on environmental justice, identified in Goal 1.2, should contain separate timelines for staff outreach and for pilot environmental justice training completion.

***B. The Department's second goal to incorporate environmental justice into land use practices would likewise benefit from additional transparency and communication efforts targeted towards EJ communities.***

The Department's second goal is to "incorporate EJ considerations in land and facility usage."<sup>6</sup> Specifically, the Department plans to map the intersection of hazard-prone areas and underserved community populations, to allocate 50% of Housing and Urban Development ("HUD") mitigation buyout funds to low-income (80% area median income) families in hazard-prone areas, and to partner with local governments for preservation of acquired hazard-prone areas to reduce the impacts of future natural disasters.

We suggest that DPS expand this goal to not only increase the amount of funding underserved communities receive for buyouts, but also to increase funding for other activities in these communities that can improve resilience to flooding and other climate impacts. Due to skewed cost-benefit analyses and other decision matrices that perpetuate structural biases for investments in areas with significant infrastructure investments, underserved communities are often offered buyouts as a primary adaptation option, while nearby wealthier communities with higher real estate values are offered adaptation options to protect-in-place.<sup>7</sup> Voluntary buyouts can be an effective method for removing residents from areas of high flood risk. However, communities need to be equitably offered options for risk mitigation. DPS should start by meaningfully engaging communities across the state and then create a toolkit of adaptation options in partnership with communities, possibly including planning, buyouts, resilience hubs, and nature-based solutions design and implementation.

Additionally, transparency and communication are vital when DPS conducts research regarding where hazard-prone areas intersect with underserved communities and when DPS prioritizes fund allocation to EJ communities. When the Department completes its research on EJ communities' vulnerabilities to hazards, DPS should publish its findings. This research will be crucial, especially considering that buyout programs often disproportionately benefit wealthier, whiter communities.<sup>8</sup> Marketing the buyout program to eligible EJ community members after this research is completed will help DPS meet the 50% buyout benchmark and avoid exacerbating existing inequalities commonly seen in buyout programs; DPS should create a communication plan to inform EJ communities in hazard-prone areas who is eligible, how much the

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<sup>6</sup> *Id.* at Goal 2.

<sup>7</sup> See Amanda Martin, *Race, Place, and Resilience: Social Equity In North Carolina's Post-Disaster Buyout Program 22-42* (2019), <https://cdr.lib.unc.edu/concern/dissertations/3r075049w>.

<sup>8</sup> Daniel Cusick & E&E News, *Racial Inequalities in Housing Extend to Flood Buyout Programs*, SCIENTIFIC AMERICAN (Feb. 19, 2020), <https://www.scientificamerican.com/article/racial-inequalities-in-housing-extend-to-flood-buyout-programs/>.

grants are worth, and how potential recipients can apply. Establishing clear processes that walk recipients through each step of the buyout process will be both meaningful and critical to hitting the 50% benchmark for the buyout program—community feedback will be essential. However, DPS should be careful not to conflate low-income families in hazard-prone areas with EJ communities, as these environmental goals need to provide assistance to overburdened communities, and funding goals should focus on EJ communities instead blind reliance on income level in a hazard-prone area.

Moreover, DPS should approach community adaptation more holistically. Most HUD funds are already designated for low- and moderate-income communities by statute, so this provision in DPS’s draft goals does not reflect the development of new environmental justice goals and measurable outcomes. DPS should broadly reflect on the resources it offers and publicizes to underserved communities, including buyout opportunities, and should evaluate restructuring to ensure the agency is responsive to the greatest community need. Where buyouts are appropriate or necessary, to avoid displacement and disruption of communities, DPS should follow best practices for relocating entire communities together as a unit, preserving intangible benefits with important environmental justice implications.

***C. DPS’s third goal, engaging EJ communities through an extreme heat toolkit, a resiliency website, and document translation is promising, and like the other proposals described above could also benefit from deliberate community involvement.***

The third draft goal is to “engage with communities most impacted by natural disasters,” which includes subgoals of creating an extreme heat toolkit for local governments, engaging with underserved communities, translating public-facing documents, and launching the new NC Resilience Exchange website.<sup>9</sup> DPS’s extreme heat toolkit and Resilience Exchange website will be valuable resources for communities; we hope these resources will both include instructions on how to submit community feedback, so that these tools may continue to be improved and made more accessible to EJ communities.

Goal 3.2 would benefit from further specificity. Currently stated, the goal proposes to “[i]ncrease, on a quarterly basis, engagement with underserved communities across multiple platforms to increase awareness of and participation in programs available to them.” The goal is vague because there is no indication of what an increase would mean, given the absence of a defined baseline. Moreover, what does engagement look like? What are the “multiple platforms,” and what are the available options to consider? How does the Department plan to track and measure increased awareness of and participation in its programs? Are there particular programs that the

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<sup>9</sup> See DPS Draft EJ Goals, *supra* note 3, at Goal 3.

Department will focus on for engagement? Are there particular geographic areas? The quarterly timeframe is the only specific feature of the goal, but it is rendered virtually meaningless by the vacuums in the rest of the proposal.

Regarding Goal 3.3, DPS should commit to ultimately translating all DPS materials—not just vital public-facing policies—into all community-relevant languages and take the added step of proactively hiring staff who are proficient in multiple languages. As with previous goals, describing outreach plans, setting dates for outreach, and translation of certain designated vital documents will ensure increased, measured, engagement with EJ communities.

Given that the NC Resilience Exchange deadline proposed in Goal 3.4 is imminent, including greater specificity about what information is available within the Exchange could substantially increase awareness of the tools included in the Exchange to assess community climate resilience needs, identify appropriate actions, and find resources to implement solutions. This goal would also benefit from some additional clarity in what is intended by identifying appropriate actions and whether these are remedial efforts, solutions or partial solutions, restorative actions, etc.

**II. The Department of Public Safety should create environmental justice goals aimed at improving practices within its other Divisions as well, particularly in the Division of Juvenile Justice, to reduce juvenile system involvement and incarceration, as well as improve juvenile detention facility environmental safety.**

While its duties in emergency management and disaster recovery have perhaps the most obvious tie-ins with environmental justice, and require careful attention to the different physical and mental health needs of EJ communities facing emergencies, we encourage the Department to also consider how its other Divisions impact EJ communities, specifically, through the Division of Juvenile Justice and Delinquency Prevention (“DJJ” or “Division”). For young people living in poor, non-white, and/or disenfranchised communities, the inequitable and disproportionately heavy exposure to environmental hazards carries a heavy price, which includes over-exposure to the criminal legal system. Consequently, DJJ has unique visibility when it comes to the intersection between environmental injustice and juvenile justice.<sup>10</sup>

We urge DPS to consider the additional goals and metrics below to advance environmental justice within DJJ and for EJ communities more holistically. While we encourage prioritization of alternatives to juvenile incarceration, these goals will

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<sup>10</sup> N.C. GEN. STAT. § 143B-601(11) (2024) (describing powers of DPS to carry out provisions “governing juvenile justice and the prevention of delinquent acts by juveniles.”).

advance the stated intent of the General Assembly<sup>11</sup> and Division of Juvenile Justice<sup>12</sup> to reduce juvenile incarceration.

**A. *The Division should establish a juvenile intake process that anonymously catalogues and categorizes risk factors for juvenile incarceration, the data for which may be used for preventative measures.***

The Department of Public Safety contains the Division of Juvenile Justice. The mission of the Division is to “[r]educe and prevent juvenile delinquency by effectively intervening, educating, and treating youth in order to strengthen families and increase public safety.”<sup>13</sup> The Division of Juvenile Justice has the power and duty to “[a]dminister a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.”<sup>14</sup> To further its mission to reduce juvenile delinquency, this intake process should ascertain whether newly admitted juvenile offenders have been exposed to juvenile delinquency risk factors.

Exposure to a variety of environmental stressors can increase the likelihood that a minor commits crime, so identification of contributing factors will inform DPS’s mission of reducing juvenile crime. Adverse Childhood Experiences (“ACEs”) are potentially traumatic events that occur in childhood,<sup>15</sup> and are disproportionately linked to arrest and incarceration.<sup>16</sup> These ACEs include exposure to violence, exposure to substance abuse, and witnessing domestic violence; any intake process for incarcerated juveniles should screen for exposure to these and other risk factors.<sup>17</sup>

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<sup>11</sup> N.C. GEN. STAT. § 143B-845 (2024) (“It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent.”).

<sup>12</sup> *Juvenile Justice and Delinquency Prevention Overview*, N.C. DEP’T PUB. SAFETY, <https://www.ncdps.gov/our-organization/juvenile-justice/juvenile-justice-and-delinquency-prevention-overview> (last visited Apr. 22, 2024) (furthering a mission to reduce and prevent juvenile incarceration).

<sup>13</sup> *Id.*

<sup>14</sup> N.C. GEN. STAT. § 143B-806(b)(3); see also *id.* § 143B-806(b)(6) (the DPS has the power and duty to “[e]nsure a statewide and uniform system of juvenile intake.”).

<sup>15</sup> *Fast Facts: Preventing Adverse Childhood Experiences*, CDC, <https://www.cdc.gov/violenceprevention/aces/fastfact.html> (last visited Apr. 22, 2024) [hereinafter *Preventing ACEs*].

<sup>16</sup> Oluwatoyin Ashekun et al., *Adverse Childhood Experiences and Arrest Rates among Individuals with Serious Mental Illnesses*, 52 J. AM. ACAD. PSYCHIATRY & L. 1, 1 (2023), [https://jaapl.org/content/early/2023/06/05/JAAPL.220096-22#:~:text=Adverse%20childhood%20experiences%20\(ACEs\)%20are,outcomes%2C%20including%20arrest%20and%20incarceration.](https://jaapl.org/content/early/2023/06/05/JAAPL.220096-22#:~:text=Adverse%20childhood%20experiences%20(ACEs)%20are,outcomes%2C%20including%20arrest%20and%20incarceration.)

<sup>17</sup> See *Preventing ACEs*, supra note 15.

Additionally, polluted air,<sup>18</sup> lead exposure,<sup>19</sup> and even continuous exposure to noise pollution<sup>20</sup> are known to increase predilections toward criminal activity.

Air and noise pollution are often sited together in EJ communities, which often must cope with cumulative impacts from the effects of industrial zoning in their neighborhoods.<sup>21</sup> Lead exposure is similarly a disparate impact associated with aging infrastructure, including public water drinking supply systems, crumbling schools, older housing stocks, and aging playground facilities that disproportionately affects EJ communities.<sup>22</sup> Together with other environmental factors, these concentrated cumulative impacts impose enormous physical and mental health burdens on lower-income and communities of color.<sup>23</sup> Children in these communities are especially vulnerable,<sup>24</sup> and these physical and mental health impacts can manifest in acting out against authority figures and other behaviors that result in involvement with the justice system.<sup>25</sup>

Collecting intake data on these risk factors may help DPS identify new preventative measures for decreasing juvenile incarceration. This intake process should include both initial screening and anonymized publication to help researchers while ensuring systems-involved youth confidentiality is respected. This database would aid researchers, help marginalized communities, and further DPS's duty to "[d]evelop and administer a comprehensive juvenile justice information system to collect data and

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<sup>18</sup> Adam Mahoney, *The Ways Pollution and Climate Change are Linked to Policing and Incarceration*, CAPITAL B NEWS (June 7, 2023), <https://capitalbnews.org/climate-justice-criminal-justice/>.

<sup>19</sup> See generally Maria Jose Talayero et. al, *The Association Between Lead Exposure and Crime: A Systematic Review*, 3 PLOS GLOB. PUB. HEALTH 1 (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10393136/pdf/pgph.0002177.pdf> (documenting increases in criminal behavior due to lead exposure at both the community level and the individual level).

<sup>20</sup> See generally Timo Hener, *Noise Pollution and Violent crime*, 215 J. PUB. ECON. 1 (2022), <https://www.sciencedirect.com/science/article/pii/S0047272722001505> (using increases in decibel levels from aircraft landing approaches to causally link noise pollution to violent crime).

<sup>21</sup> See Juliana Maantay, *Zoning, Equity, and Public Health*, 97 AM. J. PUB. HEALTH 1033, 1034 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446712/pdf/11441726.pdf>.

<sup>22</sup> See ENV'T. PROT. AGENCY, EPA STRATEGY TO REDUCE LEAD EXPOSURES AND DISPARITIES IN U.S. COMMUNITIES 16 (2022), [https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy\\_1.pdf](https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy_1.pdf).

<sup>23</sup> See Nate Seltnerich, *The One-Two-Three Punch: Exposure, Susceptibility, and Disease Burden Among U.S. Populations of Color*, 130 ENV'T. HEALTH PERSPECTIVES 1, 1 (2022), <https://ehp.niehs.nih.gov/doi/full/10.1289/EHP10904>.

<sup>24</sup> See Irena Buka et al., *The Effects of Air Pollution on the Health of Children*, 11 PAEDIATR CHILD HEALTH 513, 514 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2528642/pdf/pch11513.pdf> (describing adverse effects of criterial air pollutants on children's health).

<sup>25</sup> See Pei-Fen Kuo et al., *Analyzing the Relationship Between Air Pollution and Various Types of Crime*, 16 PLOS ONE (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8362969/pdf/pone.0255653.pdf>; see also Paul B. Stretesky & Michael B. Lynch, *The Relationship Between Lead and Crime*, 45 J. HEALTH SOC. BEHAVIOR (2004), <https://journals.sagepub.com/doi/abs/10.1177/002214650404500207>.

information about systems-involved youth for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.”<sup>26</sup>

***B. In light of the Division’s plans to construct new juvenile detention facilities, particular care should be taken to ensure that these facilities provide a safe and healthy environment, and the Division should begin by conducting an environmental justice audit of existing facilities.***

The current landscape of juvenile detention facilities reveals the need for improved conditions for incarcerated youth. All existing juvenile detention facilities are over capacity, with children recently being forced to sleep on floors.<sup>27</sup> Juvenile complaints and incarceration continue to rise, while inadequate staffing and lack of training for staff and trauma-informed care at juvenile detention facilities leaves these children and adolescents without proper care.<sup>28</sup> One of the most significant employment vacancies is for youth behavioral counselors, whose primary responsibility is keeping minors out of the juvenile incarceration system.<sup>29</sup>

DPS plans to open new facilities this year,<sup>30</sup> but any plan to open newer facilities must address existing sanitation and staffing issues at current facilities to prevent repetition of these problems. DPS should analyze whether North Carolina juvenile detention facilities are sited in areas with disproportionate levels of pollution, as pollution disproportionately harms adolescents.<sup>31</sup> Accordingly, holistically evaluating the conditions within and around existing facilities is necessary before constructing new facilities to prevent exacerbation of existing environmental justice issues. DPS should create environmental impact statement processes to evaluate acute and long-term public health impacts on soil, water, and air of the existing juvenile detention centers—and require such processes for any new DAC-related construction.

The Department’s draft goals include meaningful changes to DPS policy and encouraging initiatives that demonstrate the Department is committed to combating environmental injustices with quick timelines. However, the Department should build upon this commitment by pinpointing how other DPS Divisions intersect with

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<sup>26</sup> N.C. GEN. STAT. § 143B-806(b)(13) (2024).

<sup>27</sup> See Chelsea Donovan, *Kids Forced to Sleep on Floors Due to Overcrowding at NC Juvenile Detention Facilities*, WRAL NEWS (Sept. 20, 2023), <https://www.wral.com/story/kids-forced-to-sleep-on-floors-due-to-overcrowding-at-nc-juvenile-detention-facilities/21058407/>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

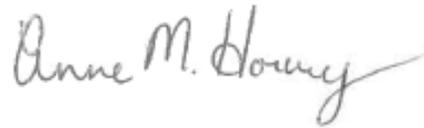
<sup>31</sup> See Na Ni et al., *Air Pollution and Adolescent Development: Evidence from a 3-Year Longitudinal Study in China*, 8 CHILDREN 1, 8-10 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8620088/pdf/children-08-00987.pdf>.

environmental justice issues to combat environmental inequality throughout North Carolina.

Sincerely,



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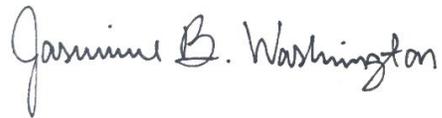
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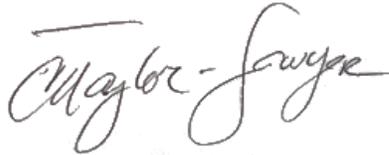
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