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Christopher Calfee, Special Counsel
ATTN: CEQA Guidelines
California Resources Agency
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**PROPOSED CEQA GUIDELINE AMENDMENTS RE CLIMATE CHANGE: COMMENT OF
THE PUBLIC TRUST ALLIANCE**

Dear Mr. Calfee:

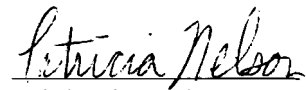
While some of the proposed changes look good (e.g., adding forests to agricultural resources affected), one element the proposed guidelines conspicuously lack is an explicit recognition of the public trust character of environmental resources impacted. Public trust resources, and statutes that purport to protect them, are subject to constitutional and residual common law requirements, and a heightened level of court scrutiny.

We have concerns that the program's cap-and-trade framework can lead to a false acceptance of the idea that the atmosphere's greenhouse gas carrying capacity is properly up for sale or alienation by the public. This capacity is not a commodity. The air is a public resource that falls within the scope of the public trust doctrine. The "sale" of public trust resources is highly disfavored under the public trust doctrine.

In addition, we are a bit uncomfortable with the description of "offsite" mitigation, including offsets, on a regional or statewide basis. This can have unacceptable environmental justice impacts. We recognize that the climate change effects of greenhouse gas emissions are global and are not influenced by the *location* of GHG emissions or of emissions offsets. However, industrial processes that are GHG-intensive are associated with other emissions with localized effects. Any climate regulatory scheme should take particular care to avoid unintended effects of concentrating industrial emissions disproportionately in neighborhoods already affected by such facilities. We also agree with The California Climate Change Center at UC Berkeley that "care should be taken in program design to avoid emitters increasing toxic emissions due to incentives

or requirements for GHG emissions. Moreover, a CA program should prohibit the trading of toxics, even if they are GHGs.”¹

Respectfully submitted,



Michael Warburton

Patricia Nelson

The Public Trust Alliance

¹ Burtraw et al., *Ch. 5, Lessons for a Cap-and-Trade Program*, in *MANAGING GREENHOUSE GAS EMISSIONS IN CALIFORNIA*, at section 3.8, Environmental Justice.