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Division of Policy, Performance, and Management Programs
U.S. Fish and Wildlife Service

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Dear Chief Van Norman and Ms. Moore:

On behalf of the Animal Welfare Institute and the Center for Biological Diversity (hereafter Commenters) we wish to thank you for holding a public notice and comment period on the proposal to import 18 African savannah elephants from the Kingdom of Swaziland to three zoos in the United States. We urge you to deny this import permit application for several reasons as summarized here and discussed in great detail in the remainder of the letter.

- The USFWS has Failed to Substantiate the Purpose and Need for Issuing the Requested Import Permit.
- The USFWS must Consider Alternatives for the Elephants in Africa.
- The Controversial Nature of the Import/Export and the Precedent that Could be Established Requires Exploration in an EIS.
- Big Game Parks should not be allowed to benefit from its mismanagement of Swaziland’s elephants.
- There is no legal authority under Swaziland’s Game Act to allow the export of live, wild-caught elephants.
- The USFWS Must Deny the Import Permit Because the Stated Purposes for Import are not Justified or are Irrelevant.
- The USFWS Must Deny the Requested Import Permit Due to a Violation of the Terms of the Permit Application.

- The applicant has failed to provide the requisite information to justify issuance of the import permit preventing the United State Fish and Wildlife Service (USFWS) from making the required findings including that the recipient zoos are suitably equipped to maintain the elephants and that the intended use of the animals is primarily for non-commercial purposes.
- The USFWS Must Deny the Requested Import Permit Due to the Failure of the Kingdom of Swaziland to Comply with CITES:

Based on these deficiencies and given the controversial nature of this import proposal, an environmental impact statement is required under the National Environmental Policy Act (NEPA) and the Service should take a hard look at the alternatives for these elephants in southern Africa. For all the reasons discussed in this letter, we ask that you deny the zoos' permit applications.

LEGAL BACKGROUND

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

CITES was enacted to protect wildlife by regulating international trade in endangered and threatened animals and plants. CITES obliges its member parties, including the United States and Swaziland, to control wildlife imports and exports by taking “appropriate measures” to enforce CITES. CITES, Art. III. In the United States, the provisions of CITES at issue in this case are implemented by the Endangered Species Act, 16 U.S.C. § 1540(g)(1)(A). International trade in wildlife is regulated under CITES by the listing of species on one of three Appendices. Species included on Appendix I, such as the Swaziland elephants, are afforded the strictest trade protections because they are “species threatened with extinction which are or may be affected by trade.” CITES, Art. II. Thus, CITES provides that “[t]rade in these species must be subject to particularly strict regulation in order not to endanger further their survival and must *only* be authorized in exceptional circumstances.” *Id.* (emphasis added).

An Appendix I animal may not be imported without “the prior grant and presentation of an import permit” from the country to which the animal will be taken and a valid export permit issued by the country from which the animal will be exported. CITES, Art. III, ¶ 3. The import permit “shall only be granted” when “a Management Authority of the State of import” is satisfied that the specimen “is not to be used for primarily commercial purposes,” and “a Scientific Authority of the State of import” has advised that the import will be for purposes which “are not detrimental to the survival of the species involved.” *Id.* In Section 8a of the ESA, Congress designated the Secretary of the Interior as both the “Management Authority” and

the “Scientific Authority” for purposes of CITES, and it has further provided that “the respective functions of each such Authority shall be carried out” through the FWS. 16 U.S.C. § 1537a(a).

National Environmental Policy Act

NEPA is the nation’s basic charter for the protection of the environment, and makes it national policy to “use all practicable means and measures . . . to foster and promote the general welfare [and] to create and maintain conditions under which [humans] and nature can exist in productive harmony,” 42 U.S.C. § 4331(a), and to prevent the decline of the “world environment.” *Id.* § 4332(F). It requires all federal agencies to prepare a “detailed statement” regarding all “major federal actions significantly affecting the quality of the human environment,” *id.* § 4332(C), commonly referred to as an Environmental Impact Statement (EIS), and it further provides that agencies “shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(2)(E).

The Council on Environmental Quality (CEQ) – an agency within the Executive Office of the President – has promulgated regulations implementing NEPA that are binding on all agencies. 40 C.F.R. §§ 1500-1508. The CEQ regulations provide that, where the agency has not determined whether an EIS is required, it must generally prepare an Environmental Assessment (EA) to determine whether the environmental effects of its proposed action are “significant” and thereby require the preparation of an EIS. *Id.* § 1501.4(b). In determining whether an action is “significant,” the agency must consider “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial” and the “[t]he degree to which the action may establish a precedent for future actions with significant effects.” *Id.* § 1508.27(b). The presence of any one of these factors “should result in an agency decision to prepare an EIS.” *Pub. Serv. Co. v. Andrus*, 825 F.Supp. 1483, 1495 (D. Idaho 1993); *see also Nat’l Audubon Soc’y v. Hoffman*, 132 F.3d 7, 18 (2nd Cir. 1997).

Based on the relevant provisions of CITES, NEPA, and a careful analysis of the Draft Environmental Assessment (hereafter DEA) entitled “Dallas Zoo Management PRT-52849B” and the associated Permit Application, the Commenters have identified the following inadequacies:

1. The USFWS has Failed to Substantiate the Purpose and Need for Issuing the Requested Import Permit

We are disappointed by the bias in the stated purpose and need for this project. All environmental assessments must state the need for the proposal. 40 C.F.R. § 1508(9)(b). Here, the stated purpose and need represents that “overpopulation” is the concern while downplaying

the reality of the situation – i.e., that the elephants do not have access to all the acreage of the parks in Swaziland in which they are maintained. We understand that the purpose and need reflects the applicants’ story but the Service must provide a more neutral account of the elephants’ status and the situation. Likewise, we disagree that the Service can write-off any value of the Swaziland elephants to in situ conservation based on emails from two members of the African Elephant Specialist group and Mr. Reilly’s brother Mick Reilly. A more formal position from the African Elephant Specialist group is necessary, and FWS must conduct far more exhaustive analysis before such a position could be adopted.

The purpose and need for the DEA states that Swaziland did not anticipate that the elephants it imported in the late 1980s and early 1990s would “detrimentally” impact the environment in Swaziland. DEA at 8. However, these elephants were imported from Krueger because the elephant population there needed to be reduced due to the impacts elephants were having on the park. Thus, it is hard to believe that Mr. Reilly had no notion of how the elephants would or could impact the landscape.

The EA should plainly state that Mr. Reilly wants to get rid of elephants to make space for other species and his goal is to keep only a nominal number of elephants in Swaziland for tourists to see. It is on this basis that he has proposed to export 18 elephants to U.S. zoos.

2. The USFWS must Consider Alternatives for the Elephants in Africa

The African Elephant Specialist Group has concluded that ex situ breeding of African elephants does not contribute to the species’ conservation in the wild. As a result, it is in the interest of African savannah elephant conservation that the 18 Swaziland elephants find homes in southern Africa. NGOs in Africa have offered to pay to transport the elephants to alternative in situ homes and even to pay to feed the animals while such arrangements are made.¹ While these alternatives may be outside the FWS’s control, they are highly relevant to the overall evaluation of the proposed import. As it stands, the DEA represents that Mr. Reilly intends to kill the elephants if they are not exported to the U.S. However, if there are other alternatives for these animals to contribute to African savannah elephant conservation in the wild, then that alters key terms of the proposal and should be relevant to and influence the FWS’s decision.²

¹ See, e.g. <http://www.sabreakingnews.co.za/2015/11/09/other-options-for-swaziland-elephants/> (Jonathan Tager, CEO of groupelephant.com, a global company which supports not for profit work on rhinos and elephants said his organization is prepared to fund the relocation of the elephants to other reserves in Africa. “We think we have found somewhere and are willing to help fund the feeding of the elephants while we complete the negotiations and thereafter will help fund the relocation if necessary,” Tager said on Wednesday. “If we need to we will consider buying the elephants. It is clear that this whole thing is not about conservation but about making money”).

² Mr. Reilly argues that he cannot export the elephants within southern Africa. However, Swaziland’s trade history belies this argument. In 2005, Mr. Reilly exported two African elephants to South Africa. This transaction undermines the arguments put forth by the zoos and Mr. Reilly that export can only be to the U.S. and not destinations in southern Africa.

3. The Controversial Nature of the Import/Export and the Precedent that Could be Established Requires Exploration in an EIS

One of the significance factors that triggers the need for preparation of an Environmental Impact Statement is the controversial nature of the proposal. 40 C.F.R. § 1508.27(b). This factor has been interpreted to mean that there are real disputes over the proposal – not just public opposition. As discussed above, there is growing scientific controversy over the ability of small captive facilities to adequately provide adequate care for large, wide-roaming, intelligent mammals like elephants. Such scientific controversy that is directly relevant to the heart of a proposal, such as we have here, requires careful analysis in an Environmental Impact Statement.

Moreover, there is great controversy over whether the only two options for reducing Swaziland’s elephant populations are exporting the elephants to the U.S. or killing them. Swaziland has previously exported live African savannah elephants to South Africa and offers have been extended to pay for transport of the elephants to other parks or reserves within southern Africa. These other options, which would help define this project and disclose its impacts, are ignored in the DEA. Consideration of these options is necessary in an Environmental Impact Statement.

Other NEPA significance factors relevant to the action include “the degree to which the action may establish a precedent for future action with significant effects,” 40 C.F.R. § 1508.27(b)(6), and “whether the action is related to other actions with individually insignificant but cumulatively significant impacts.” *Id.* at § 1508.27(b)(7). In this case, the potential precedent that could be set by the USFWS permitted, for the second time in 12 years, the import of live, wild-caught African elephants is not limited to additional demand for elephant imports into the U.S. Rather, this decision could increase global demand for the import of African elephants and/or be used by exporting countries to justify past and future live elephant exports. Indeed, Zimbabwe has already noted this proposed import of African elephants into the U.S. In an article published in *The Herald*,³ Environment, Water, and Climate Minister Oppah Muchinguir-Kashir said that Zimbabwe would continue to export live elephants to reduce the ever growing population that was unsustainable. She added that:

“We exported elephants to China and there was backlash from America. But we are glad that they are also importing. They imported elephants from Swaziland as we speak. So now we can challenge them that they are denying us from exporting to China yet they are importing.”

³ See: <http://www.herald.co.zw/army-uz-join-war-on-poachers/>

Given this and the likelihood that other countries, including countries with Appendix I elephants may use the precedent potentially set by the U.S. in this case, the global precedent that could be set by this decision must be evaluated in an Environmental Impact Statement.

4. The USFWS Must not Countenance Irresponsible Elephant Management by Big Game Parks in Swaziland by Authorizing the Proposed Import

As you are well aware, the proposed exporter, Mr. Reilly is head of Big Game Parks in Swaziland where the elephants currently reside, the owner of the elephants, and the CITES Management Authority and Scientific Authority for the country. Mr. Reilly received a huge economic windfall after threatening to kill 11 African savannah elephants if they were not exported to U.S. zoos in 2003. Having failed to either keep his elephant populations at the size he desires or to expand the habitat provided for elephants in his two parks – Hlane and Mkhaya – Mr. Reilly, as discussed in greater detail below, should not be allowed to benefit from his mismanagement of these majestic and imperiled animals again.

While Mr. Ted Reilly and the Reilly family are credited with restoring wildlife populations to Swaziland, a careful review of the permit application reveals that Mr. Reilly is also an opportunist and a businessman. The three game reserves (Hlane, Mkhaya, and Mlilwane) under the jurisdiction of Big Game Parks (BGP), which is operated by the Reilly family, are intensively managed facilities where the manipulation of nature is routinely utilized as a management tool. As indicated in the permit applications, these reserves are either entirely fenced or have significant portions fenced for management purposes. In some cases, lethal predator control is practiced to protect select ungulates (Permit Application at 48⁴) while in other cases, ungulate have been captured and removed to reduce grazing pressures (Permit Application at 23, 184, 358, 362). In the Mkhaya reserve, a section of the land is fenced to preserve a unique cattle herd (Permit Application at 47, 90). While the relatively small size of these reserves along with the fact that large areas contain wildlife enclosed by fencing may necessitate such active management, BGP also relies on the sale of wildlife from its reserves to fund its operations.

It appears that funding needs were, in part, the motivation for the 2003 export of Swaziland elephants to the United States. In exchange for those elephants, BGP received \$40,000 USD annually in funding from the San Diego and Lowry Park zoos from 2004 through 2014. Permit Application at 67. While the permit application suggests that this funding may continue (*id.*), the proposed import of additional Swaziland elephants presently under consideration by the U.S. Fish and Wildlife Service (USFWS) would, if permitted, ensure BGP another \$450,000 USD (\$90,000 USD per year for five years) from the Dallas, Henry Doorly,

⁴ Since the Permit Application was not sequentially numbered by the applicant, the page numbers cited throughout this comment letter correspond to the page number on the PDF copy of the 1094 page Permit Application released by the USFWS.

and Sedgwick County zoos over the next five years⁵ (Permit Application at 21, 32, 35).⁶ It would appear that elephants are a cash crop for BGP and the profits to be made from these animals through their sale and export may, in part, explain why the previous export did not trigger sufficient efforts to prevent an increase in the elephant population thereby necessitating another export for profit.

Indeed, based on the timing of this most recent attempt to export elephants from Swaziland, it would appear that BGP has concocted this need to export 15 elephants to take advantage of the financial windfall offered by the Dallas, Henry Doorly, and Sedgwick County zoos. In the BGP 2013 report to the San Diego and Lowry Park zoos (Permit Application at 354) which was required per the terms of the 2003 elephant export, BGP provides no indication that its elephant population, which likely included at least 36 elephants at the time, was too large or was adversely impacting existing habitat or other species. In 2014, however, there were suddenly too many elephants, they were devastating the vegetation and old trees in Hlane and Mkhaya reserves, and they were harming vulture populations and hindering the restoration of black and white rhinoceros.

While this is not to suggest that there would not be conservation value to increasing numbers of black and white rhinoceros in Swaziland, it is likely that the sudden interest in rhino conservation is, in part, a product of the immense value of these animals in live trade, for trophy hunting, and potentially through the sale of rhino horns in the future. The permit application includes a number of references to the potential for the live trade in Swaziland rhinos and allowing some rhinos (and other species) to be killed by trophy hunters or for management purposes – actions that would provide enormous potential revenue to BGP and the Reilly family. See Permit Application at 59, 69, 188, 206, 216, 218, 225.

The fact that 15 or more elephants are currently available for export should also be subject to additional analysis in the permit application and in the DEA. As noted in the permit application, in 2009, seven Swaziland bull elephants were vasectomized in order to try to reduce the growth rate of the herd. Permit Application at 54. As explained in the permit application, after the 2003 export, there were a total of 26 elephants remaining in Swaziland including 12 in Hlane and 14 in Mkhaya reserves, respectively. Permit Application at 52. Of these elephants, six were males (5 in Hlane and 1 in Mkhaya). The reserve-specific breakdown of adult male, adult

⁵ The USFWS mischaracterizes the Memorandum of Understanding (Permit Application at 35) which establishes the terms for the three zoos to collaborate in supporting BGP by claiming that it was signed by all three zoos and BGP (DEA at 11,13), when it was only signed by the three zoos. A separate agreement between the zoos and BGP (Permit Application at 38) was signed by all four parties.

⁶ Notably and to the credit of the three zoos, this funding will be provided under the agreement whether or not the import of the elephants takes place. Permit Application at 32. The USFWS mischaracterizes this funding agreement in its DEA claiming that if the permit application is rejected this could invalidate the Memorandum of Understanding between the three zoos and their agreement with BGP which could, in turn, eliminate the promised financial support to BGP. DEA at 14, 15.

female, and elephant calves in 2009 (when the vasectomies) were conducted) is not included in the permit application but, in 2011, it is reported that there were 19 and 13 elephants in Hlane and Mkhaya reserves, respectively (with no sex or age breakdown).

In 2014, there are 39 elephants in the two reserves including only six adult males (5 in Hlane and 1 in Mkhaya which is identical to the numbers in 2003 after the previous export) (Permit Application at 52) and, reportedly, the population is stable due to the vasectomies conducted in 2009. Permit Application at 230. It is unknown at what age male elephants in Swaziland begin to breed but, if like other populations in Africa, the males do not reach reproductive age until 10-15 years of age (but even then are unlikely to breed due to their lack of dominance). Consequently, any male calves born after 2005 (at the latest) are not yet old enough to breed. Considering that seven male elephants were vasectomized in 2009 and noting that only six adult males are currently in the population the increase in the herd from 32 in 2011 to 39 in 2014 suggests that one or more of the vasectomies was not successful and/or that there remain intact bull elephants (born prior to approximately 2005) in the herd. Regardless, the claim that the current elephant population is stable due to the vasectomies conducted six years ago cannot be true since, if that were the case, the population would have been stabilized shortly after 2009 once any elephants pregnant at the time gave birth.

If the latter scenario is correct, it is incomprehensible that BGP did not know that there remained intact bulls in the Swaziland herds post 2009. Yet, it made no subsequent effort to vasectomize those bulls and/or to use other fertility treatments to prevent the birth of additional elephant calves. Since both elephant herds live in fenced enclosures, BGP surely knew that doing nothing would ultimately result in an increase in the number of elephants to the point where additional removals would be required providing further evidence that BGP elected not to do everything in its power to stop the growth of the herd so that it could, as it did in 2003, obtain another financial windfall by sacrificing elephants to a lifetime in captivity in US zoos. The US should not endorse such blatant and purposeful mismanagement of Swaziland elephants by issuing the requested permit or, if the permit is issued, it must include a condition directing the Dallas, Henry Doorly, and Sedgwick County zoos to ensure that all remaining bull elephants in Swaziland are vasectomized and/or that other fertility control options are utilized to prevent any further increase in the country's elephant population necessitating another export in 10 years.

5. The USFWS Must Deny the Requested Import Permit Because the Swaziland Game Act Does not Authorize the Export of Schedule 1 Animals

As indicated in the permit application, the Swaziland Game Act (Permit Application at 162) is the "legal instrument protecting and controlling wild animals of Swaziland, and the trafficking in wildlife and wildlife products." Permit Application at 217, DEA at 2. The Game Act, which was promulgated in 1953, was subsequently amended in 1991. A careful

examination of the Game Act and its amendment (as included in the permit application) indicates that it does not permit the export of live elephants.

In the original Game Act, elephants were designated as Royal Game or First Schedule wildlife. Game Act Section 2. Under that law, a “trophy” was defined to include live or dead animals including the First, Second, and Third schedules while “hunt” including shooting at, pursuing, killing, taking, or willfully disturbing game (which included Royal Game). *Id.*

The law expressly prohibited the hunting of Royal Game without a permit, Game Act Section 8(1), but “free permits” could be issued for the hunting, killing, or capturing of any game anywhere for scientific, administrative, or complimentary reasons. Game Act Section 16(2). Such free permits could be issued for hunting, killing, and capturing game animals in game reserves (like Hlane and Mkhaya reserves) and sanctuaries for scientific and administrative reasons or when the animal is detrimental to the purposes of the game reserve or sanctuary. *Id.* at 16(2)(b)(i and ii).

The Game Act permitted the export of game meat (Game Act Section 17) and skins (Game Act Section 19) from wild animals upon receipt of a permit but contains no language authorizing the export of a live elephant (or any other live animal for that matter).

When the Game Act was amended in 1991, elephants remained designated as First Schedule or Specially Protected Game but the designation of Royal Game was applicable only to Second Schedule species. Game Act as amended Section 2. In the amended law, the definition of hunt was expanded to include stealing, injuring, capturing, snaring, and trapping while the definition of “trophy” was limited so that it only applied to Second and Third Schedule wildlife (i.e., elephants were no longer considered trophy animals or wildlife). *Id.*

Hunting of Specially Protected Game is prohibited except if allowed pursuant to the issuance of a permit (Game Act as amended Section 8(1)) and “free permits” were available to allow the hunting, killing, or capturing of any game or to permit the import or export of any trophy. Game Act as amended Section 16(1)(a and b). While permits can be obtained to allow the import or export of any “trophy” or “raw product of Specially Protected Game,” Game Act as amended Section 19(1), since elephants are no longer considered a trophy species under the amended law, this allowance for export only covers raw products from elephants -- not live elephants.

Consequently, as written, the Game Act, as amended, does not appear to authorize the export of wild-caught, live elephants. If this is the preeminent law that governs the management, including import or export, of wildlife in Swaziland, the applicant must provide additional evidence to demonstrate that the export of live elephants from Swaziland is legal under the country’s laws. If such evidence is not provided, should the USFWS issue an import permit it

would be allowing the import of wildlife in violation of another country's national legislation – presumably an action the USFWS would prefer to avoid. It is conceded that Mr. Ted Reilly of BGP has been issued Royal Warrants allowing the capture of wildlife for conservation purposes (Permit Application 9, 243) and for the export of said wildlife (Permit Application at 1084) but it is unclear if such warrants take precedence over the provisions of the Game Act, as amended.

6. The USFWS Must Deny the Import Permit Because the Stated Purposes for Import are not Justified or are Irrelevant

The applicant provides four “purposes” (i.e., 1A, 1B, 2, and 3) for the import. The two primary purposes are to aid BGP in achieving its elephant management goals in Swaziland (Permit Application at 9) and to help support the captive population goals of the Association of Zoos and Aquariums (AZA) Elephant Taxon Advisory Group and Species Survival Plan (TAG/SSP).

In regard to the first primary goal (identified as Purpose 1A), the alleged need to reduce the population of elephants in Swaziland is to make room for black and white rhinos, to improve conditions for vultures, and to reduce the alleged damage attributable to elephants in the Hlane and Mkhaya game reserves. Permit Application at 9. While there is no question that both elephants and rhinos require large amounts of habitat and recognizing the difficulty in managing such animals in fenced enclosures (even large fenced enclosures) particularly without adequate population control (preferably non-lethal strategies), neither the applicants nor BGP has provided sufficient evidence to support the claim that the elephants have to be removed, that rhinos cannot coexist with the elephants, that the rhinos can't be kept elsewhere while the elephant population (with the use of fertility control strategies) gradually declines, and that the overall number of vultures or other wildlife in the reserves has declined as a direct result of the presence or impacts of elephants.

While BGP has obtained confirmation from so-called experts that the Swaziland elephants are not critical to the metapopulation of elephants in Southern Africa (Permit Application at 12, 54, 245, 248), that the elephants adversely impact rhinos, vultures, and their habitat, and that both Hlane and Mkhaya game reserves provide suitable habitat for rhinos, neither BGP nor the applicant provides credible evidence to substantiate the anti-elephant claims contained in the permit application. Beyond mere verbiage, the application contains only a few pictures reportedly depicting the condition of the habitat in the reserves or elephant damage to a tree. The three studies it references (Permit Application at 61) are either too general in nature to be relevant to the Hlane and Mkhaya reserves or were conducted in other areas that may not be ecologically or climatologically similar to the Swaziland reserves and, therefore, shouldn't be used to predict competition between elephants and rhinos for forage in Swaziland.

Neither the applicant nor BGP explore other potential explanations for the alleged decline in habitat quality in the reserves. For example, a number of recent media articles about the proposed import suggest that Swaziland is undergoing a prolonged drought yet there's no evidence included in the permit application to suggest that drought factors may be the primary cause of any reported decline in habitat quality. The permit application includes a few references to sugar cane production in Swaziland (Permit Application at 68, 91, 109) but fails to evaluate the potential impact of this extremely water-intensive crop on vegetation production, abundance, diversity, composition and water hydrology in or near either of the reserves. Notably, the only study included in the permit application that contains any information about vegetative conditions in Hlane reserve was published in 1978. Permit Application at 91. One would think that, considering the alleged conservation ethic of Mr. Ted Reilly, his family, and BGP that far more evidence and data would be available, including published studies, documenting changes in the floral and faunal composition of the Hlane and Mkhaya reserves, how elephant numbers and densities may have contributed to such changes, and what other factors may also be at work.

It is convenient to blame wildlife for such reported adverse impact to habitat and other species. Such rhetoric is not limited to Swaziland as it occurs everywhere, including in the United States, and is often used as the primary justification for a massive capture or culling operation. This is not to suggest that wildlife can't or don't cause such impacts, but credible evidence of such effects should be provided before drastic actions, like the capture and export of nearly half of Swaziland's remaining elephants is undertaken.

Furthermore, while BGP claims that it can't – and won't – translocate any of its elephants to other parks or preserves, it is simply impossible that there are not alternative options for the placement of some of its elephants in Africa if they, indeed, need to be moved. BGP claims that new standards for the management of elephants in South Africa make it unlikely that it would accept any elephants, that, due to the elephant poaching crisis, Mozambique, Zimbabwe, and Zambia are not options for translocation, and that Namibia and Botswana have no need for additional elephants. Permit Application at 12, 54. At the same time, however, BGP is willing to lethally cull its elephants as “the least preferred option” (Permit Application at 12) if the import permit application is rejected.⁷ This is an unfortunate and unnecessary “Sophie's choice” since, with the reduction in elephant numbers across much of Africa, there simply must be areas where translocated elephants could thrive and, with the introduction of adequate enforcement efforts, have a chance to survive.

The USFWS should reject the import permit application at least pending further evidence that there are excess elephants in Swaziland and, most importantly, that they are causing the severity of impacts alleged by BGP and the applicant and that, if so, there are no alternative placement options in South Africa or other countries in Africa. If necessary, the United States

⁷ Although nothing in the Permit Application suggests that the elephants will be culled if the import permit is not granted, the USFWS includes such a claim in the DEA. DEA at 12, 15.

should contact the King of Swaziland directly to discuss alternatives for the placement of these elephants instead of succumbing to the death threats and scare tactics being used by BGP to ensure that it can export these elephants and receive the agreed-upon financial windfall.

As to the second primary purpose (identified as Purpose 1B) for the import, to aid in reaching the AZA TAG/SSP captive African elephant population goals (Permit Application at 13), evidence in the permit application provides compelling evidence that the import of the Swaziland elephants is not needed to achieve these goals.

As a preface to that discussion, it should be noted that the applicant provides no compelling evidence to suggest that keeping African elephants in captivity in the United States provides any meaningful conservation benefit to wild African elephants. Indeed, it admits that it has no intention of reintroducing captive elephants, including any offspring born in US zoos, to the wild in Africa. Permit Application at 321. Consequently, the only argument that it could possibly make to support any conservation benefit to wild elephants is that captive elephants aid wild elephants as a result of conservation education and/or as subjects for scientific research.⁸

In regard to the captive African elephant goals of the AZA TAG/SSP, the evidence included in the petition demonstrates that the Swaziland elephants are not needed to reach the goal of 221 African elephants in captivity over the long-term. In the population modelling analysis by Faust and Marti conducted in 2011 (Permit Application at 386) included in the permit application (a paper that does not appear to have been published in the peer-reviewed literature) and the update to that analysis (Permit Application at 406), increasing the reproduction rate of captive African elephants already in US zoos, particularly those in AZA accredited zoos, and reducing elephant calf mortality rates will achieve the goal of having 221 African elephants in captivity within variable time periods depending on the model parameter analyzed without importing a single wild-caught African elephant.

For example, increasing the existing captive elephant birth rate from 3.5 calves/year to 4-5 would allow the TAG/SSP population goal of 221 captive African elephants to be reached in over 200 years. Permit Application at 394. If the birth rate can be increased to 6-7 calves/year,

⁸ The permit application includes various glossy and fancy publications which purport to justify a cause and effect between conservation education around captive elephants in US zoos and a benefit to wild elephants but, in reality, there is no credible evidence of any direct benefit for wild elephants. It is of no surprise that some people who may visit zoos may be more conservation minded than average citizens or that a visit to the zoo may teach visitors about a particular species or conservation in general, but this is a far cry from demonstrating that zoo visitors engage in direct or indirect conservation efforts to protect wild elephants or their habitat upon visiting a zoo. Indeed, if a visit to see elephants in a zoo provided such a conservation benefit then, given the decades that elephants have been kept in captivity worldwide and the billions who have visited zoos over time, there should be no current crisis affecting wild African or Asian elephants. The reality, which most zoos refuse to accept, is that most people visit the zoo for something to do, for entertainment, and that whatever conservation message is sent by zoos it does not translate into credible, meaningful, on-the-ground benefits to wild elephants.

this can be accomplished in an average of 48 years. *Id.* If the birth rate could be increased to 5 calves per year and if AZA breeding institutions were not required to fill non-breeding institutions, there would be a 25 percent chance of meeting the population goal in approximately 85 years. Permit Application at 396/397. Similarly, if the birth rates increase and the sex ratio of the calves can be manipulated to favor females, the overall population would meet the target population size 99 percent of the time. Permit Application at 398. While not endorsing efforts to increase the birth rate of captive African elephants, these data demonstrate that the population goal can be achieved without resorting to imports of wild elephants.

While importing wild African elephants, including as few as 10 animals (2 males and 8 females) could expedite the goal to reach 221 elephants, none of the import only model scenarios resulted in achieving the population goal. In each import parameter used (including a one-time import of 10, 20, 30, or 40 elephants or the import of 40 elephants in 10 years) there was an initial spike in elephant numbers but the trajectory then declined to below the current captive population estimate. Permit Application at 395. As concluded in the analysis, “even massive importations cannot change the population trajectory without being combined with changes to reproductive rates and other management actions.” *Id.* Only when imports were combined with increasing the elephant reproduction rate and/or reducing calf mortality rates, was the population objective attainable. Permit Application at 409.

Indeed, in the update to the modelling analysis performed in 2014, simply using the updated captive population estimate (166 elephants) and the reduction in calf mortality to 27 and 18 percent for males and females, respectively (compared to 32 and 27 percent rates used in the 2011 modelling exercise), while the captive population declined over the first 30 years it then began to increase steadily over time. Permit Application at 408. What was not modeled in the updated analysis was the population growth rate over time with the reduced calf mortality, larger starting population, and an increase in the birth rate although it is expected that such parameters would result in a more rapid rise in the population after an initial decline compared to the analysis not containing the higher birth rate.

Hence, since the AZA TAG/SSP can reach its desired African elephant population goal without importing a single elephant, the USFWS should disregard this particular purpose as justification for the issuance of the import permit. Furthermore, if it prepares a supplemental EA or, preferably, an EIS to more carefully review the environmental impacts of the proposed action, the USFWS should more carefully review and summarize the results of the population modelling work as its current summary contained in the DEA contains a number of claims that are not supported by the underlying analysis.

The third purpose (identified as Purpose 2) offered by the applicant to support the request for an import permit is for research purposes. Permit Application at 16. This is not identified as a primary purpose of the import permit application. The list of potential research projects

contained in the permit application (Permit Application at 526-531) includes several projects that do not require captive elephants and/or could use elephants who are currently in captivity thereby negating their relevance to justifying issuance of the import permit. For the other studies, while they may be of academic interest, they do not justify authorizing the import of 15-18 wild-caught African elephants to spend the remainder of their lives in captivity to generate additional elephants to sustain the US captive elephant population long-term when there is no meaningful conservation benefit.

Finally, the fourth (identified as purpose 3) stated purpose for the import permit is essentially the same as achieving the captive African elephant population goal of the AZA TAG/SSP (Permit Application at 17) which is discussed above.

Based on this evidence, the USFWS should not rely on any of the purposes offered by the applicant to justify the issuance of the requested permit application. Or, alternatively, if it believes any of the alleged purposes has merit it should request a more detailed analysis of the issues in the form of a supplement to the import permit prior to rendering a decision on this request. Any supplement to the permit application must be evaluated in a revised or supplemental DEA, in an EIS (preferably), and must be subject to public review.

7. The USFWS Must Deny the Requested Import Permit Due to a Violation of the Terms of the Permit Application

The permit application is clear that “only following approval of all necessary import and export permits will specimens be removed from the wild.” Permit Application at 9 (See also Permit Applications at 8 “Specimens will not be identified for possible export and removed from the wild until all necessary permits are available.”). Nevertheless, the DEA and a variety of newspaper articles about the proposed import concede that the elephants have already been captured and are being held in one or more bomas in Swaziland.

The USFWS inexplicably dismisses this development as insignificant through its casual references to the elephants already being held in bomas in its DEA (DEA at 15) despite such captures being explicitly contingent upon the issuance of all relevant approvals from both the United States and Swaziland. If the terms of any permit application are not followed then this diminishes the value or requiring the submission of information to justify the issuance, in this case, of an import permit.

At present, if the USFWS denies the permit application – as it should – it is unclear if the elephants could simply be released or if they would require some form of rehabilitation prior to release. Furthermore, even if BGP has no intention of releasing the captured elephants back into the reserves if the import is not allowed, the fact that the Dallas, Henry Doorly, and Sedgwick County zoos along the BGP committed to not capturing the elephants until all approvals were

received is important and should not have been violated. Ignoring the failure of the applicants to live up to such a commitment by issuing the import permit would effectively reward bad behavior and set an unfortunate precedent for future applicants to commit to certain actions but to freely ignore such commitments without penalty.

Furthermore, the permit application requests permission to import 15 elephants (Permit Application at 8) yet 18 have been captured and are being held in the bomas. As explained in the DEA, three adult females were captured with three, dependent, male calves and, consequently, the Dallas, Henry Doorly, and Sedgwick County zoos have now sought permission to import 18 instead of 15 elephants. DEA at 17. Apparently this requested change was communicated to the USFWS through an email but, to date, the zoos have not submitted any amendment to the application to specify where these three mother/calf pairs would be placed, whether the zoos have the capacity to handle additional bull elephants as these calves mature, or where these bull elephants (once mature) will be placed.

8. The USFWS Must Deny the Requested Import Permit Due to a Failure to Provide the Required Information to Justify Permit Issuance

Pursuant to 50 C.F.R. § 13, 14, and 23 an applicant for a permit to authorize an activity that is otherwise prohibited under the Endangered Species Act (which encompasses CITES) must provide information to prove the permit issuance is justified and consistent with law. In this particular case, the information required includes: applicant contact information including addresses, telephone numbers, tax identification number (for businesses) (see 50 C.F.R. § 13 *et seq.*); a certificate of veterinary medical inspection, specifications relevant to the primary enclosure including the provision of food and water to the specimens during transport, standards for care during transport, loading and unloading procedures, efforts to protect the animals from harassment (50 C.F.R. § 14 *et seq.*); and, marking requirements for live specimens in trade, identifying all persons who will be responsible for the animals in trade, providing information about the facilities where the animals will be kept and resumes of those caring for the animals, environmental enrichment plans, evidence that animals will receive water and nutritious food, evidence of sufficient funding for the long-term care of the animals, evidence that the import is not detrimental to the species in the wild, and proof that the intended use of the animals is not for primarily commercial purposes (see 50 C.F.R. § 23 *et seq.*).

Despite the girth of the permit application, the Dallas Zoo (the applicant which is acting on behalf of itself and the Henry Doorly and Sedgwick County zoos) has failed to provide much of this required information. For example:

A. The Applicant has Failed to Provide Detailed Information about the Transportation Plan and Animal Care Standards During Transport for the Elephants Should the Import Permit be Issued

Applicants intending to import live wildlife into the U.S. must provide an assortment of information to ensure the animals are humanely transported while minimizing the risk of injury, mortality, and/or psychological trauma. Such information includes a certificate of veterinary medical inspection (50 C.F.R. § 14.105(b)), transporting the animals in legally permissible primary enclosures (*id.* at § 14.106 et seq.), ensuring the animals have access to food and water (*id.* at § 14.108 et seq.), ensuring proper care in transit (*id.* at § 14.109 et seq.), and preventing the harassment of the animals during transport (*id.* at § 14.111(f)(4)).

While the applicant states that it will comply with the International Air Transport Association guidelines for the transport of live elephants, it provides no information about the containers or primary enclosures to be used to transport the elephants, does not indicate how or if the elephants will be fed or watered during transport, fails to explain how the animals will be protected from harassment during transport, nor does it include information about ground transport once the elephants arrive at the respective ports for off-loading. Instead, it reports that “descriptions, diagrams and photographs of the transport crates and the protocol for care and feeding will be provided to the U.S. Management Authority for review and approval prior to shipment.” Permit Application at 31. Not including such detailed information in the permit application violates the permit requirements and prevents the public from having an opportunity to review and comment on such transportation plans.

B. The Information Regarding the Experience and Expertise of Personnel who may be Responsible for the Elephants is Incomplete

Any applicant seeking a permit to import a live, CITES Appendix I specimen must provide sufficient information about the “description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.” 50 C.F.R. § 23.65(b)(2). This is required so that the USFWS can make a determination that the facility is “suitably equipped” to care for the specimen.

The applicant includes resumes for a number of zoo personnel at the Dallas, Henry Doorly, and Sedgwick County zoos but, inexplicably, the USFWS redacts information relevant to when the personnel obtained training, educational degrees, or for present and past work experience for all personnel except for those at the Sedgwick County zoo. It is not clear why such information was redacted but it makes it more difficult for the public to confirm that those who will be responsible for the care of the elephants have the educational background and training reported in their resumes.

In addition, the USFWS redacted information about the years of experience zoo personnel have with elephants in the permit applications (see Permit Application at 936-937 and 1037-1038) compared to pages 1048-1049. This information is directly relevant to the so-called

expertise of the zoological park personnel, which is critical for determining if the permit should be issued. Therefore, its redaction from the public copy of the application is inexplicable and hinders the ability of the public to assess such alleged expertise.

C. No Information is Provided about the Facilities and Personnel at the National Elephant Center

Any applicant seeking a permit to import a live, CITES Appendix I specimen must provide sufficient information about the “description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.” 50 C.F.R. § 23.65(b)(2). This is required so that the USFWS can make a determination that the facility is “suitably equipped” to care for the specimen.

The applicant fails to include any information about the National Elephant Center in Fellsmere, Florida or the resumes of those who work at the facility despite the fact that it would appear that several of the elephants, if imported, will be kept at that facility until the Henry Doorly and Sedgwick County zoo elephant facilities are completed.

The permit application plainly states that if those facilities are not completed then the elephants destined for those zoos would be temporarily kept at the National Elephant Center. Permit Application at 23. According to documents found online, the Henry Doorly zoos elephant facility is not scheduled to be completed until summer of 2016⁹ while, for the Sedgwick County zoo, its facility is not scheduled to open until May 2016.¹⁰ The USFWS cannot allow any elephants to be placed at the National Elephant Center unless the required information about the Center and its staff is provided through an amendment to the permit application and is subsequently provided to the public for its review.

D. The Zoos are Not Suitably Equipped to Care for 18 Wild African Elephants

To find that a facility is suitably equipped the FWS considers several factors. These factors include, but are not limited to: enclosures that “provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement;” “Appropriate forms of environmental enrichment;” “an off-exhibit area, consisting of indoor and outdoor accommodations, as appropriate;” “water and nutritious food of a nature and in a way that are appropriate for the species;” staff “trained and experienced in providing proper daily care and maintenance for the species” or a closely related species; and “Readily available veterinary care or veterinary staff experienced with the species or a closely related species, including emergency care” 50 C.F.R. § 23.65(c).

⁹ See the Omaha Zoo’s Master Plan Report (<http://www.omahazoo.com/about/master-plan/>). See also: <http://www.omahazoo.com/exhibits/african-grasslands/>

¹⁰ See: <http://www.kansas.com/news/local/article36537549.html>

As an initial matter, although the Permit Application contains widely divergent statistics as to the size of the fenced elephant areas in Hlane and Mkhaya reserves (ranging from a total of 15,048 to 79,073 acres) (compare Permit Application at 10, 53, and 245), even the smallest estimate is far larger than any of the elephant facilities at any of the three zoos which range from 4.6 acres for all indoor and outdoor elephants at the Dallas Zoo (Permit Application at 24/25) to 5.16 acres for just the outdoor areas at the Sedgwick County Zoo (Permit Application at 27/28). While pictures and/or drawings of the elephant facilities at the three zoos are provided, the applicant does not include a specific elephant enrichment plan for any of the facilities and there is no information included about the diets to be fed to the elephants at any of the facilities. While the permit application makes reference to elephant enrichment as a critical element of captive elephant care and notes select enrichment strategies that could be employed at one or more of the facilities, it fails to provide a zoo-specific enrichment plan for any of the three zoos.

Nor does it include information about how the imported elephants would be integrated with existing elephants kept at the facilities which surely must be a consideration in determining if the zoos are suitably equipped to care for the Swaziland elephants. The Henry Doorly zoo appears to have a single elephant (Permit Application at 430), the Dallas Zoo has five elephants (Permit Application at 419/420) and the Sedgwick County zoo has one. Permit Application at 435. Elephant integration plans should be required for all of the facilities since adding new elephants to an existing social unit could result in stress, aggressiveness, and potential injury to the new or existing elephants.

Similarly, while the zoos intend to manage the elephants in “natural herd settings” (Permit Application at 23), “natural herd environments” (DEA at 9), and/or in “natural family groups” (DEA at 13) neither the application nor the DEA include information about what these terms mean or how they will be accomplished. Presumably, the captured Swaziland elephants represent two or more matriarchal groups. While these elephants are to be observed to determine compatibility and filial associations (Permit Application at 15) as well as being subject to genetic testing to determine relatedness in order to facilitate placement at the zoos, it is unclear if existing Swaziland matriarchal groups will be kept intact or if, for long-term breeding purposes, they will be split up to avoid mating by closely related elephants. Alternatively, perhaps existing family groups will be maintained with unrelated bulls or their semen being used to impregnate the females. Such additional detail must be included in the permit application for it to be complete and for the USFWS to determine if the zoos are suitably equipped to care for these animals.

Furthermore, long-term placement and use of the Swaziland elephants must be disclosed. If imported, will they remain at the destination zoo or is there the potential that, in time, the family group bonds will be broken by moving the elephants to other zoos?

Similarly, additional information should be provided regarding the short and long-term care of existing elephant bulls at the three zoos and any male elephant calves that may be imported from Swaziland. With the addition of the three dependent male calves, a total of seven male calves may be imported. Eventually, these calves, assuming they survive, will become large, powerful, African bull elephants requiring specialized facilities and care. While the information submitted about the elephant facilities at the three zoos include some information about areas for bull elephants, that information is not sufficiently detailed to ensure that such large, powerful animals will be humanely cared for at these facilities. Nor is any information included about the long-term disposition of the bull elephants.

Without the foregoing information, the USFWS cannot make the requisite finding that any of the three zoos are suitably equipped to care for the Swaziland elephants as is required under CITES and USFWS regulations.

E. The Commercial Aspects of the Import/Export Dominate the Non-Commercial Aspects

The FWS also reviews several factors in deciding whether the export/import is primarily for a commercial purpose. While the focus is on the “intended use of the specimen,” FWS must also review “the purpose of the export” to determine if the transaction is primarily commercial. 50 C.F.R. § 23.62(b)(4)-(5).

Yet, based on the content of the Permit Application, the applicant has failed to provide sufficient evidence to allow the USFWS to determine if the import is not for primarily commercial purposes. Under the relevant regulation, this determination is made on a case-by-case basis and it is up to the applicant to prove that its use of the imported animal is not for primarily commercial purposes. Here, the applicant relies solely on the not-for-profit status of each of the three zoos (Permit Application at 1075-1079) and the fact that, in the past, the USFWS has made such findings for imports of live wildlife by zoos. Permit Application at 31. In this case, past decisions and the mere non-profit status of the zoos in question are not sufficient to justify a determination that the proposed imports are not primarily for commercial purposes.

As an initial matter, although not necessarily considered by the USFWS in making this determination, the \$450,000 pledged by the three zoos to BGP is clear evidence of the commercial nature of this trade. Furthermore, with the exception of the Dallas Zoo which opened its new elephant facility in May 2010, the elephant facilities at the Henry Doorly and Sedgwick County zoos remain under construction. Once completed, there is little question that new elephant facilities containing elephants imported from Swaziland will be a significant draw for visitors to these zoos. Indeed, all three zoos will likely trumpet the availability to see the new elephants for the specific and primary purpose of generating ticket sales to increase revenue. Remarkably, as noted in the Permit Application, in 2014 all AZA facilities combined generated

21 billion USD in economic activity demonstrating the commercial nature of zoo and aquariums.¹¹ Permit Application at 483. This too demonstrates the commercial nature of the intended use of the imported elephants.

In regard to the risk assessment that the USFWS should perform pursuant to 50 C.F.R. § 23.62(d) to assess whether this import is not primarily for commercial purposes, there can be little question that the imported elephants (and their new facilities at two of the zoos) will result in measurable increases in revenue or other economic value, that the appeal of elephants to the public is high, and that captive African elephants are relatively uncommon in the United States with only 155-166 (Permit Application at 320, 406) in AZA and non-AZA zoos in 2011.

In addition, while such revenues associated with the import may be – and should be -- devoted to *in situ* conservation projects, the relevant regulation requires the USFWS to consider that “if the species was or is to be taken from the wild, how the project benefits the species in its native range, including agreements, timeframes for accomplishing tasks, and anticipated benefits to the species.” Since the species being taken from its native range are African elephants, the funds paid by the zoos to BGP must be used to benefit “the species” or, in other words, African elephants in Swaziland. This is consistent with 50 C.F.R. § 23.62 (b)(7) which specifies that “all net profits generated in the United States from activities associated with the import of an Appendix-I species must be used for conservation of that species.” Under this regulation the funds generated by this project cannot be used for other purposes or species including for the conservation of rhinoceros, vultures, or any other species as is currently planned by BGP. See Permit Application at 21.

At a minimum, if the USFWS issues the requested import permit, it must include as a condition of the permit that the zoos track any revenue generated as a result of the import of the Swaziland elephants to ensure that all such funds are used for *in situ* African elephant conservation purposes as it is authorized to do under existing regulation. 50 C.F.R. § 23.62(e)(4).

9. The USFWS Must Deny the Requested Import Permit Due to the Failure of the Kingdom of Swaziland to Comply with CITES

While the legal acquisition and non-detriment findings required to be made by the Kingdom of Swaziland pursuant to Article III paragraph I of CITES are not or have not been made available and, therefore, cannot be reviewed, Swaziland is acting in contravention of the intent of CITES by failing to have separate Management and Scientific Authorities.

According to information obtained from the CITES website (see: <https://cites.org/eng/cms/index.php/component/cp/country/SZ>), BGP and, more specifically, Mr. Ted Reilly, is identified as both

¹¹ The AZA facilities reportedly spent 160 million USD on conservation project which, while notable, represents only .76 percent of their 21 billion in economic activity.

the CITES Management Authority and Scientific Authority for the Kingdom of Swaziland. This is not consistent with the intent of CITES which recommends that “all Parties designate Scientific Authorities independent from Management Authorities” (see Res. Conf. 10.3) due to the need for independence and objectivity in making the CITES determinations applicable to each entity.

In Swaziland, because BGP acts as both the Management and Scientific authority, the same entity makes the legal acquisition finding, the non-detriment finding, and issues the export permit. As a consequence, it is impossible for any independent analysis in the decision-making process. Furthermore, since BGP also stands to obtain a significant financial windfall for exporting these elephants, its objectivity in making the requisite determinations is suspect. Indeed, in this case, BGP is the judge and the jury while also benefitting from the decision made.

Conversely, while in the U.S. the USFWS encompasses both the Scientific and Management Authority, they are separate entities with separate staff, procedures, and responsibilities. As an original signatory to CITES and an ardent supporter of the proper implementation of the convention, the U.S. should not countenance Swaziland’s violation of the intent of CITES by allowing the import of elephants based on a decision-making process that has no independence or objectivity. Consequently, the U.S. must either deny the request for an import permit or make the issuance of the permit conditional on Swaziland establishing separate Management and Scientific Authorities where only one (or none) is directed by BGP.

CONCLUSION

Based on the foregoing analysis, there can be little question that the applicant has not met its legal burden to adequately justify its request for an import permit for the Swaziland elephants. It is equally clear that the USFWS has failed to subject this proposed import to adequate analysis in the DEA and that an EIS is warranted to fully evaluate the direct, indirect, and cumulative impacts of this proposal. Consequently, we strongly encourage the USFWS to reject this permit application and work with the applicant, the other zoos, BGP, the NGO community and the Swaziland government to find, if necessary, alternative placement options for these elephants in Africa.

Furthermore, at a time when illicit trade in elephant ivory is threatening the existence of African savannah and forest elephants, with an elephant killed for its ivory every 15 minutes, we question whether any trade in elephants should be occurring. We ask you to take a strong stance in support of elephants, as you have commendably done by halting the trade in elephant sport hunted trophies from Tanzania and Zimbabwe. To protect savannah and forest elephants from extinction we need to send a clear message that trade in these animals and their parts is not acceptable. This can be done by rejecting the permit application.

Thank you in advance for considering these comments. Should you have any questions or need additional information, please contact either Mr. Schubert or Ms. Sanerib using the information below. In addition, should there be any further correspondence regarding this issue please ensure that both Mr. Schubert and Ms. Sanerib are included on the project mailing list.

Sincerely,



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