

**CITIZEN PETITION BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE**

IN DEFENSE OF ANIMALS

131 Camino Alto, Suite E,
Mill Valley, California 94941

v.

MIKE JOHANNIS

Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Room 200A
Whitten Building
Washington, DC 20250

Docket No. _____

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U.S. Department of Agriculture
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**PETITION SEEKING AN INTERPRETIVE RULE AND ENFORCEMENT
UNDER THE ANIMAL WELFARE ACT TO ELIMINATE VIOLATIONS OF
THE SPACE AND CONDITIONS REGULATIONS FOR ELEPHANTS AT ZOOS**

Pursuant to the Right to Petition Government Clause contained in the First Amendment of the United States Constitution,¹ the Administrative Procedure Act,² and

¹ “Congress shall make no law ... abridging ... the right of the people ... to petition Government for a redress of grievances.” U.S. Const., amend. I. The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass’n, 389 U.S. 217, 222 (1967). It shares the “preferred place” accorded in our system of government to the First Amendment freedoms, and has sanctity and a sanction not permitting dubious intrusions. Thomas v. Collins, 323 U.S. 516, 530 (1945). “Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger.” Id. The Supreme Court has recognized that the right to

the U.S. Department of Agriculture's (USDA) implementing regulations,³ petitioner respectfully requests that the USDA issue an interpretive rule and enforce the Animal Welfare Act (AWA) and the agency's implementing regulations by requiring that zoos that exhibit elephants fully comply with the agency's adequate space and conditions regulations.⁴ This action is necessary in order to prevent chronic and life threatening foot and joint problems that are the leading cause of suffering and premature death for elephants in zoos. Specifically, petitioner seeks the following

- (1) USDA should issue an interpretive rule⁵ explaining its adequate space and conditions rules for elephants at zoos, circuses and other exhibitors. Petitioner requests that the interpretive rule specify the following:

- (a) Inadequate space provided for captive elephants (including indoor and outdoor enclosures) and inadequate conditions (including amount of time confined, type of substrate, and cleanliness of floors) cause foot and joint problems in elephants. The presence of foot and joint problems in elephants is a sign that exhibitors are not meeting the AWA's requirements for adequate space and conditions.

- (b) Elephant enclosures shall be large enough to allow exhibited elephants to exercise similarly to how elephants exercise in the wild;

- (c) In order for USDA to effectively enforce the adequate space and conditions rules, elephant exhibitors are required to send their medical records to USDA regional inspectors quarterly to review. Inspectors will review the records prior to visiting the exhibit and observe the physical condition of the elephant during their on-site inspections. This visual observation includes picking up the elephants' feet to observe problems with the feet;

- (d) When the agency finds that elephants are suffering from chronic foot and joint problems, the agency will conclude that this is an indication of inadequate care, inadequate space and living conditions. USDA will cite violators of the adequate space and conditions regulations and require that the

petition is logically implicit in, and fundamental to, the very idea of a republican form of government. United States v. Cruikshank, 92 U.S. (2 Otto) 542, 552 (1875).

² 5 U.S.C. § 553(e).

³ 7 C.F.R. § 1.28.

⁴ 9 C.F.R. §§3.128, 2.131(c)(1).

⁵ Petitioner notes that USDA has established animal welfare "policies." USDA explains that the majority of these "policies" are actually legally defined as "interpretive rules." USDA, Animal Care Answers, at <http://www.aphis.usda.gov/ac/q2.html> (last visited Aug. 25, 2004).

exhibitor enlarge the space and improve the conditions or move the elephants to a better environment, such as a sanctuary; and

(e) The agency will consider exhibitors to be in violation of the adequate care, space and conditions regulations when elephants develop chronic foot problems, and the symptoms of those problems are treated (through the use of antibiotics, anti-inflammatory and pain-killing drugs) without addressing the cause (inadequate space and conditions).

- (2) USDA should immediately inspect all elephant exhibitors beginning with the zoos discussed in this petition that currently have elephants suffering from chronic foot and joint problems and confiscate elephants in poor condition.⁶ These zoos include: National Zoo, Lee Richardson Zoo, Abilene Zoo, Reid Park Zoo, Los Angeles Zoo, and Cameron Park Zoo.

PETITIONER

Petitioner, In Defense of Animals, (IDA) is a nonprofit international animal protection organization dedicated to ending the exploitation and abuse of animals by defending and advocating for their rights, welfare and habitat. IDA's efforts include educational events, cruelty investigations, boycotts, grassroots activism, and hands-on rescue through its sanctuaries in Mississippi and Cameroon, Africa.

STATEMENT OF FACTS

Elephants, like humans, live in multi-faceted societies. They are highly intelligent, possess complex emotions, exceptional memory and live unusually long lives. They can remember other individuals after more than a decade of separation, and are capable of emotions such as joy, anger, grief, sympathy, playfulness, and revenge. Numerous scientific observations suggest that: (1) Elephants recognize their own image in a mirror indicating that elephants are self-aware; (2) Elephants have the capacity for both empathy and anticipatory planning, including the possibility of imagining future

⁶ Petitioner recommends that USDA thoroughly examine the feet of all exhibited elephants regularly and confiscate elephants in poor condition. 9 C.F.R. § 2.129.

events, such as pain to themselves and others; and (3) Elephants suffer long-term psychological effects of trauma and abuse, which may be expressed in the form of inappropriate and hostile behavior. Taken together, these scientific discoveries show that USDA needs to fully enforce the AWA to ensure that captive elephants are provided with humane care.

USDA's action to ensure humane care should begin with examining the space allotted and conditions provided to captive elephants. USDA's animal welfare regulations require that an exhibited animal must have sufficient space and be exhibited under conditions consistent with its good health and well being.⁷ In assessing whether an animal has adequate freedom of movement, USDA looks at what is normal for the species under natural conditions.⁸ In addition, USDA looks at the condition of the elephant to determine whether there is evidence of inadequate space and conditions.⁹

The industry standards set by the American Zoo and Aquarium Association for Elephant Management and Care require 400 square feet indoors for a single animal and 600 square feet for a male or female with a calf. Outside requirements are 1,800 square feet for a single animal with an additional 900 square feet for each additional animal.¹⁰ This space standard is far different from what is normal for elephants under natural conditions (i.e. in the wild). For example, elephant expert Joyce Poole explains that

In Amboseli, elephants inhabit what is regarded as a relatively small area for wild elephants. Members of this elephant population range over approximately 5,000km² [3,100 square miles]. Each elephant and its family have a core area of use encompassing at least 194km² [120 square

⁷ 9 C.F.R. §§ 3.128, 2.131(c)(1).

⁸ See Adequate Enclosures for Flying Species and Aquatic Species, Animal Care Resource Guide, Policy #24 (Oct. 13, 1998).

⁹ See 9 C.F.R. § 2.131(d)(1).

¹⁰ AZA, Standards for Elephant Management and Care (last updated May 5, 2003) (describing conditions that must be met by exhibitors including, outdoor surfaces must consist primarily of natural substrate with good drainage and enclosures must be cleaned of excrement regularly)

miles]. Elephants travel 8 to 20 kilometres [5-12 miles] a day, frequently walking further in areas of lower resource availability, or when a male is searching for females. Figures for Asian elephants are similar with home ranges averaging 350 km² [270 square miles] for males and 100 to 115km² [62-71 square miles] for females and daily movements ranging between 8 to 22 km [5-14 miles].¹¹

Clearly, the 400 square feet recommended by the AZA is a much smaller space requirement than the 120 square miles used by elephants under natural conditions. Thus, USDA enforcement actions, as requested herein, should not overlook exhibitors following the AZA industry standards. Even facilities that meet the AZA standards may have elephants that are in poor health, due to the limited amount of space provided, resulting in the exhibitor not being in compliance with the AWA.

Many of the health problems elephants have in zoos involve chronic foot and joint damage. This problem is widespread among zoo elephants and has become the number one cause of suffering and premature death for elephants at zoos.¹² More than 50 percent of captive elephants develop foot-related problems.¹³

Experts agree that the reasons elephants at zoos are suffering from foot and joint problems are directly attributable to their inadequate space and living conditions. For example, most elephants at zoos live on hard concrete surfaces and compacted soil, stand for long hours in their own waste, and are confined in small spaces for long periods of time prohibiting sufficient exercise.¹⁴ Due to the inadequate amount of space and

¹¹ Poole Dec. ¶ 15.

¹² See Schmidt Decl. ¶ 2.

¹³ Gary West, Occurrence and Treatment of Nail/Foot Abscesses, Nail Cracks, and Sole Abscesses in Captive Elephants, in The Elephant's Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants 93 (Blair Csuti, et al., eds., 2001) [hereinafter "West, The Elephant's Foot"].

¹⁴ See e.g. Schobert Decl. ¶¶ 8-9; Schmidt Decl. ¶¶ 6-7, 12; Alan Roocroft and James Oosterhuis, Foot Care for Captive Elephants, in The Elephant's Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants 22 (Blair Csuti, et al., eds., 2001) [hereinafter "Roocroft and Oosterhuis, The Elephant's Foot"].

inappropriate living conditions, elephants are suffering from chronic foot and joint problems.

This is a severe animal welfare problem that is contrary to the Animal Welfare Act and the agency's regulatory goals of providing humane care and protecting the health of exhibited animals. Should the agency fail to address this problem, zoos will continue to lose their elephants to chronic foot disease and arthritis, the leading reason for euthanizing captive elephants.¹⁵ Michael Schmidt, a veterinarian and expert in caring for elephants, explains that the unyielding surfaces that elephants are kept on cause zoo elephants' feet to become progressively worse, eventually taking a deadly toll.¹⁶

Although most elephants in zoos have foot and/or joint problems, wild elephants do not have these same problems. The reason why wild elephants do not suffer from foot-related diseases is because they walk up to 18 hours a day on different substrates allowing the pads of their feet to remain healthy. Captive elephants, on the other hand, stand in confined spaces on concrete and other unyielding surfaces in their own waste and urine for up to 16 hours a day. (Elephants in zoos are commonly confined inside in barn stalls during off hours.) Due to this inactivity and such unclean and unnatural conditions, the pads on elephants' feet at zoos wear down very little leading to overgrown and cracked pads that are vulnerable to foot abscesses.¹⁷ Experts agree that "[e]lephants

¹⁵ See Murray E. Fowler, An Overview of Foot Conditions in Asian and African Elephants, in The Elephant's Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants 5 (Blair Csuti, et al., eds., 2001) [hereinafter "Fowler, The Elephant's Foot"]; West, The Elephant's Foot, supra note 13 at 93.

¹⁶ Schmidt Decl. ¶¶ 2, 6.

¹⁷ See Roocroft and Oosterhuis, The Elephant's Foot, supra note 14 at 22. Excessive walking by elephants on hard surfaces causes the pads to wear too thin. Id. at 39; Schobert Decl. ¶¶ 8-9 (explaining that standing on concrete does not wear elephants' pads evenly).

certainly didn't evolve to stand motionless for long periods of time" yet this is precisely how many elephants in zoos spend their days.¹⁸

An example demonstrating the correlation between inhumane and inadequate space and living conditions for zoo elephants and the development of chronic foot and joint problems occurred at the San Francisco Zoo. At this zoo, all four elephants suffered for many years from chronic foot problems and lameness. After the death of two of the elephants, (Maybelle, who died after collapsing and suffering for over twenty years with chronic lameness and foot problems and Calle, who was euthanized after suffering for almost ten years of chronic foot problems and lameness), the zoo was forced to review the living conditions for its elephants.¹⁹ It was clearly evident that the zoo's facilities contributed to the elephants' chronic foot and joint problems and the zoo was forced to admit that its facilities were outdated and the elephants needed to live in a better environment.²⁰

After the two deaths, the zoo decided to transfer its two remaining elephants, Lulu and Tinkerbelle, in November 2004 to the Performing Animal Welfare Society's (PAWS) sanctuary in San Andreas, CA. Unfortunately, this move came too late. In March of 2005, Tinkerbelle was euthanized due to complications with her feet and degenerative joint disease.²¹ Although the San Francisco Zoo transferred its remaining elephants to a place where the elephants' health could recover, it acted too late to save three of its four

¹⁸ Roocroft and Oosterhuis, *The Elephant's Foot*, *supra* note 14 at 37.

¹⁹ See In Defense of Animals, *Save Zoo Elephants: Elephant Bios*, at http://www.savesfzoelephants.com/maybelle_bio.html and http://www.savesfzoelephants.com/calle_bio.html (last visited May 18, 2005).

²⁰ See *San Francisco Zoo Decides to Relocate Elephants Because of Poor Facilities*, Associated Press, (May 6, 2004), available at http://www.elephants.com/news/globalnews.php?newsSubCategory_id=3#17. [hereinafter "Relocate Elephants"].

²¹ See Press Release, San Francisco Zoo, *Asian Elephant Tinkerbelle Is Euthanized* (March 25, 2005), available at <http://www.sfzoo.org/generated/pressReleases/285Tinkerbelle.pdf> [hereinafter *Tinkerbelle Euthanized*].

elephants. This example shows the imperative nature of petitioner's requests and thus, the agency should respond quickly to prevent further animals deaths.

Other elephant exhibitors are starting to recognize the correlation between inadequate conditions and space and chronic foot and joint disease. For instance, the Detroit Zoo's Director, Ron Kagan, "is credited for being the first zoo director to voluntarily give up his elephants on humane grounds."²² The Detroit Zoo decided to retire its two elephants, Winky and Wanda, to the warm-weather PAWS sanctuary because the elephants could not be properly housed and cared for in Detroit during the cold winter months.²³ Wanda had developed chronic arthritis and Winky was combating chronic foot problems.²⁴ The director recognized that when elephants are kept indoors during the winter, they cannot exercise and are forced to stand on unyielding surfaces making them prone to serious foot and joint disease.²⁵ The director explained that "[n]ow we understand how much more is needed to be able to meet all the physical and psychological needs of elephants in captivity, especially in a cold climate."²⁶ He believes that the elephants need "up to 20 acres of land to provide an adequate environment."²⁷ This amount of space is significantly larger than the one-acre enclosure in which Wanda and Winky lived at the Detroit Zoo.²⁸

²² Richard Farinato, Detroit Zoo Sends Its Elephants Packing. Should Other Zoos Follow Suit? Humane Society of the U.S., May 27, 2004, at http://www.hsus.org/wildlife/wildlife_news/detroit_zoo_sends_its_elephants_packing_should_others_follow_suit.html [hereinafter "HSUS"].

²³ See Marc Kaufman, Detroit Zoo's Elephants to Retire to Calif., Wash. Post, Dec. 7, 2004, at A3 [hereinafter "Kaufman"].

²⁴ HSUS, supra note 22.

²⁵ See Kaufman, supra note 23.

²⁶ Hugh McDiarmid, Jr. Detroit Zoo to Free Elephants: Animals going to a refuge, (May 20, 2004), available at http://circuswatchwa.org/news/detroit_zoo_frees_elephants.htm

²⁷ Id.

²⁸ See id.

The San Francisco Zoo and the Detroit Zoo are among the zoos that have chosen to address inadequate space and conditions issues by retiring their elephants at sanctuaries. PAWS in California is one sanctuary where elephants are being retired and another is the Elephant Sanctuary in Tennessee. At these sanctuaries, elephants who struggled with foot diseases for numerous years are recovering. Carol Buckley, a co-founder of the Elephant Sanctuary, has seen first hand how elephants that come to the sanctuary with severe foot problems “recover due to the vast amount of space that they have access to as well as improved living conditions which reflect a more natural environment, much like what they would experience in the wild.”²⁹

Although sanctuaries are saving the lives of many elephants with foot infections, most zoos are not choosing this option. Unlike the Detroit Zoo, many zoos are not preventing and eliminating the unnatural conditions that cause problems to elephants’ feet and joints (such as getting them off concrete floors) and instead are trying to treat the problem by using pain-relieving medication, antibiotics, anti-inflammatories and medical interventions such as repeatedly trimming the rotting flesh of infected elephant feet.³⁰ These interventions do nothing to eliminate the underlying cause of the elephants’ physical conditions and do not exempt zoos from providing humane living conditions.

In order to protect the health of captive elephants, USDA needs to enforce the AWA. The medical records from many zoos show that these zoos are violating USDA’s regulations because their elephants are suffering from chronic foot and joint disease that is linked to the inadequate amount of space and conditions provided for their elephants. Because foot and joint problems are the number one physical problem with elephants at

²⁹ Buckley Decl. ¶ 8.

³⁰ See Schmidt Decl. ¶ 13.

zoos, USDA needs to take aggressive action by issuing an interpretive rule to clarify its regulations requiring adequate space and conditions for elephants at zoos.

USDA's interpretive rule should explain that where elephants at zoos are suffering from chronic foot and/or joint problems due to inadequate space and conditions, USDA will enforce the AWA by requiring that these zoos either improve their space and conditions or relocate their elephants to a more suitable environment, such as a sanctuary, where the elephants' health can improve.³¹ Since foot problems develop over time, USDA must ensure that zoos act to prevent foot and joint disease in younger, healthy elephants by providing them adequate conditions or relocating them to a sanctuary with appropriate living conditions. This interpretive rule should be backed by strict enforcement, including physical inspection of the elephant's feet and their medical records. Only when elephants can live in a zoo designed to meet their biological and behavioral needs will the health conditions of these elephants be alleviated, allowing them to live healthy lives consistent with the intent of the AWA and the agency's implementing regulations.³²

STATEMENT OF LAW

Administrative Procedure Act, 5 U.S.C. § 551 et seq.

Animal Welfare Act, 7 U.S.C. § 2131 et seq.

Animal Welfare Regulations, 9 C.F.R. § 1.1 et seq.

³¹ See petitioners request *infra* at pp 2-3.

³² See 9 C.F.R. §§ 3.128, 2.131(c)(1).

ARGUMENT

I. USDA’S REGULATIONS REQUIRE THAT ENCLOSURES FOR EXHIBITED ANIMALS PROVIDE SUFFICIENT SPACE AND ADEQUATE CONDITIONS FOR THE ANIMALS.

USDA’s regulations specifically identify adequate space and conditions as an animal welfare requirement that must be met by exhibitors such as zoos. These regulations explain that the amount of space and type of conditions must be adequate for the well-being of the animal.

The space requirement under 9 C.F.R. § 3.128 states the following:

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

This regulation requires exhibitors to provide sufficient enclosure space for the animal by giving the animal adequate freedom of movement. USDA has interpreted the term “adequate freedom of movement” to include the ability to exercise.³³ The agency looks at “what is normal for that species under natural conditions.”³⁴ In addition, the space requirement in 9 C.F.R. § 3.128 specifies that inadequate space is evidenced by the animal’s poor health.³⁵ Thus, in order to determine whether a zoo is providing adequate space for an animal, such as an elephant, USDA looks at whether the enclosure is large enough to allow the elephant to exercise similarly to how the animal would move in the wild and USDA assesses the physical condition of the elephant at the zoo. If an elephant

³³ See Space and Exercise Requirements for Traveling Exhibitors, Animal Care Resource Guide, Policy #6 (Oct. 13, 1998).

³⁴ See Adequate Enclosures for Flying Species and Aquatic Species, Animal Care Resource Guide, Policy #24 (Oct. 13, 1998).

³⁵ 9 C.F.R. § 3.128.

is suffering physically and not receiving the amount of exercise that the elephant would get in the wild, then according to USDA's regulations, the zoo is violating the law.

USDA's regulations also require that exhibitors such as zoos only exhibit animals under adequate conditions. The regulation states that "[a]nimals shall be exhibited only for periods of time and under conditions consistent with their good health and well being."³⁶ Climate is a factor in determining whether conditions are adequate. USDA regulations state that "[w]hen climatic conditions present a threat to an animal's health or well-being, appropriate measures must be taken to alleviate the impact of those conditions."³⁷ As with § 3.128, these regulatory sections also provide that the health of an exhibited animal should not be harmed by their living conditions. Clearly, the health of an exhibited animal is a crucial factor used by USDA to determine whether the exhibition facility meets USDA's animal welfare regulations. Therefore, in applying these regulations to elephants, if an elephant at a northern zoo is housed in a small enclosure with hard unclean floors during the winter months and suffers from chronic foot and joint problems, then according to USDA's regulations, this zoo is violating the law.

The evidence presented below shows that zoos are providing elephants with inadequate space and living conditions that are affecting their health and well being. Experts have documented the link between small enclosures and unnatural living conditions at zoos with elephants' foot and joint problems. USDA should act consistently with its own regulations by inspecting zoos and protecting the health of exhibited elephants by requiring exhibitors to eliminate these AWA violations.

³⁶ 9 C.F.R. § 2.131(d)(1).

³⁷ Id. § 2.131(e).

II. ELEPHANTS IN ZOOS ARE SUFFERING FROM CHRONIC FOOT AND JOINT PROBLEMS CAUSED BY INADEQUATE SPACE AND LIVING CONDITIONS

Elephants at many zoos are standing on hard concrete flooring, in their own waste for 16 hours or more, and in small confined spaces for long periods of time, especially during the winter at northern zoos, without sufficient exercise. Experts agree that these factors are causing chronic foot and joint disease in elephants that can lead to death. This correlation between foot and joint disease in elephants and inadequate enclosure space and living conditions is visible and prevalent at zoos across the country.

(a) Expert Opinion Explaining the Correlation Between Foot and Joint Disease in Exhibited Elephants and Inadequate Space and Living Conditions at Zoos.

Experts agree that chronic foot disease and arthritis are the major causes of suffering and premature death for zoo elephants.³⁸ Elephant experts have identified hard flooring, unclean living conditions, and inadequate space as the primary causes of these physical problems.³⁹ To protect the health and well being of elephants, most zoos need to take immediate action by either alleviating or preventing foot and joint disease through improving the elephant's space and living conditions or moving the elephants to sanctuaries where their needs can be met.⁴⁰

³⁸ See Schmidt Decl. ¶¶ 2, 12; Fowler, The Elephant's Foot, *supra* note 15 at 3, 5-6 (stating that "[f]oot problems constitute the single most important ailment of captive elephants. More caretaker time is spent caring for feet than on any other task, except feeding and cleaning").

³⁹ Katharina M. Hittmair, et al., *Radiographic Diagnosis of Lameness in African Elephants (Loxodonta africana)*, 41 Vet Radiol. & Ultrasound 511-15 (Nov./Dec. 2000)[hereinafter "Radiographic Diagnosis"]

⁴⁰ Foot problems in older elephants pose serious risks. Elephant experts explain that "[o]steomyelitis in the bones of the feet of older elephants has been a significant cause of mortality in the over 40-year age group. The best method of treating osteomyelitis is to take preventive measures to keep the infection from occurring in the first place." Laurie J. Gage, David Blasko, and the Elephant Staff from Six Flags Marine World, Address at the U.C. Davis Workshop, *Elephants: Behavioral, Ecological, and Cultural Perspectives* (October 28, 2000) (abstract available at <http://www.vetmed.ucdavis.edu/CCAB/abstra~1.htm>) [hereinafter UC Davis Workshop].

1. Concrete Flooring

Elephant experts have identified several causes for foot and joint diseases in elephants. First, concrete flooring is one of the main reasons exhibited elephants have foot problems.⁴¹ Elephant experts explain that “[w]e believe that elephants spending the majority of their lives on hard surfaces such as concrete or asphalt are more prone to foot problems than elephants housed on softer or more natural substrates.”⁴² Despite this information, the use of concrete flooring at zoos is widespread. In a survey conducted among the elephant exhibitors around the country, 91 percent of exhibitors indicated that they have concrete floors and over half believed that there was a relationship between concrete flooring and foot disease.⁴³

In the wild, elephants walk on soft substrate such as grass, mud, clay, and sand that give under their feet allowing their toenails to dig into the earth.⁴⁴ These natural conditions allow elephants’ feet to wear normally. The natural conditions in the wild are in sharp contrast to the hard concrete flooring at most zoos. This type of flooring has no give and thus, the elephant’s feet wear abnormally because the animal is walking flat-footed.⁴⁵ Walking everyday on hard concrete surfaces can cause the elephant’s pads to

⁴¹ See Schmidt Decl. ¶ 6.

⁴² UC Davis Workshop, supra note 40.

⁴³ See Norie Dimeo-Ediger, Results of a Survey of Elephant Foot Condition and Care in North America, in The Elephant’s Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants 153 (Blair Csuti, et al., eds., 2001) [hereinafter “Dimeo-Ediger, The Elephant’s Foot”]. Although over half of those surveyed saw a relationship between concrete flooring and foot disease, over half of those surveyed also thought it was a low priority to change indoor flooring. Id. Clearly, many zoos are not acting to change the living conditions of elephants to provide for their well-being. This action is inconsistent with the AWA regulations which need to be aggressively enforced by USDA.

⁴⁴ See Schmidt Decl. ¶ 6.

⁴⁵ See Carol Buckley, Captive Elephant Foot Care: Natural-Habitat Husbandry Techniques, in The Elephant’s Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants 53 (Blair Csuti, et al., eds., 2001) [hereinafter “Buckley, The Elephant’s Foot”] (explaining that “my experience has been with captive elephants in zoo and circus environments. Because many of these elephants are restrained by chains for many hours and housed in relatively small concrete or dirt yards or in barns with concrete floors, they will require more foot care than elephants living in a natural-habitat environment.”).

wear too thin, harming the underlying tissue, which can then lead to abscesses of the foot.⁴⁶

Elephant expert Dr. Schmidt explains that due to the daily abuse from standing on hard flooring, “the elephants’ feet become chronically infected by bacteria and fungi. My experience has shown me that concrete flooring injures and kills elephants.”⁴⁷ He further explains that:

. . . over time, the daily accumulation of damage from standing and walking on flat concrete floors tends to cause joint injury and predisposes the elephant’s feet to infection from abnormal wear. As the joints and feet become progressively injured by life spent on a concrete floor, the pain the elephant feels makes it reluctant to move around as much on its sore legs and feet. This creates a vicious circle and downward spiral of pain, followed by less movement, causing further injury, causing more pain, causing even less movement, etc. It is a continuous, gradual process that does its damage bit-by bit and this damage continues hourly, daily, weekly, monthly and through the long decades of an elephant’s life in the zoo.⁴⁸

Elephant experts repeatedly point out that natural substrates should be used to prevent and alleviate foot and or joint problems because this type of substrate allows an elephant to dig and “exercise and strengthen leg and foot muscles, tendons, and joints. This exercise and activity directly supports healthy feet throughout the elephant’s life.”⁴⁹ This information from elephant experts shows that rather than housing elephants on hard concrete flooring, elephants should live on softer, more natural and resilient yielding surfaces.⁵⁰ This change in the elephant’s living conditions will help to prevent and alleviate the elephant’s foot and joint problems.

⁴⁶ See Roocroft and Oosterhuis, The Elephant’s Foot, supra note 14 at 39.

⁴⁷ Schmidt Decl. ¶ 6 (emphasis added).

⁴⁸ Id.

⁴⁹ Roocroft and Oosterhuis, The Elephant’s Foot, supra note 14 at 22, 45 (listing actions to prevent abscesses, including “allowing the elephant to live on soft, yielding surfaces”).

⁵⁰ UC Davis Workshop, supra note 40.

2. Unclean Living Conditions

Another factor that causes foot and joint problems for zoo elephants is their unclean living conditions. Because elephants are kept in small confined spaces for long hours, they cannot avoid standing in their own urine and waste. Most elephants have to stand in their own urine and feces for up to 16 hours during zoo off hours, until the zoo keeper comes in and cleans out the stalls.⁵¹

Elephant feces contain harmful bacteria and the urine damages the tissues of their feet. As a result of the abnormal wear on the concrete floor, fissures and cracks develop in the feet allowing dung and urine to get inside the feet and cause harm.⁵² When elephants get foot infections, it is difficult to treat and cure because antibiotics often do not reach the curative levels in the foot and the healing is delayed due to poor blood supply to the affected tissue.⁵³ There is also a real danger to zoo keepers and veterinarians in treating elephants with these painful conditions.⁵⁴

3. Inadequate Space

Finally, one of the most common causes of foot problems in elephants is due to inadequate space. By confining elephants into small quarters and limiting their movement, they receive an inadequate amount of exercise. Elephant experts explain that “[h]ealthy feet require exercise of all joints, tendons, and ligaments. Anything less predisposes an elephant to foot problems, especially later in an elephant’s life.”⁵⁵ Other elephant experts confirm this by stating that “[e]lephants that have significant daily

⁵¹ See Roocroft and Oosterhuis, The Elephant’s Foot, supra note 14 at 22; Schobert Decl. ¶ 8.

⁵² See Schmidt Decl. ¶ 7.

⁵³ See id. at ¶ 8.

⁵⁴ Id.

⁵⁵ Roocroft and Oosterhuis, The Elephant’s Foot, supra note 14 at 21.

exercise seem to have fewer foot problems than elephants that primarily stand throughout the day.”⁵⁶

Despite the physical needs of elephants, requiring sufficient space to exercise for the health of their feet, the AZA only requires that its members give an elephant a minimum of 400 square feet of indoor space and at least 1,800 square feet of outdoor space.⁵⁷ This amount of space is highly criticized by many elephant experts. One former zoo curator explains that the “AZA standards for elephant enclosures are far from adequate. These standards are comparable to putting a 100 pound Labrador dog into a 5 feet by 6 feet bathroom for its entire life.”⁵⁸ The Royal Society for the Prevention of Cruelty to Animals issued a study identifying the animal welfare problems at zoos in Europe and explained that even the minimum AZA and the European AZA standards for elephant enclosures are “60 to 100 times smaller than the smallest wild territories.”⁵⁹ Elephants at AZA accredited zoos are known to be suffering physical problems due to the inadequate amount of space in their enclosures, clearly indicating that the AZA standards are not benefiting, but rather harming the health of exhibited elephants.⁶⁰

The AZA and some other members of the zoo community argue that there is no scientific evidence that elephants require ample space and suggest that elephants only

⁵⁶ UC Davis Workshop, *supra* note 40.

⁵⁷ See *Guide to Accreditation of Zoological Parks and Aquariums*, American Zoo and Aquarium Association, 54 (2005), available at <http://www.aza.org/Accreditation/Documents/AccredGuide.pdf> (last visited May 1, 2005).

⁵⁸ Schobert Decl. ¶ 13.

⁵⁹ RSPCA, *Live Hard, Die Young: How Elephants Suffer in Zoos*, 4-5, available at <http://www.rspca.org.uk/servlet/Satellite?pagename=RSPCACampaigns/Elephants/FactsAndReports&articleid=1024473728261> (last visited May 18, 2005) [hereinafter RSPCA Study].

⁶⁰ See Schobert Decl. ¶ 13. In addition to foot problems, elephants in small enclosures at zoos also may exhibit stereotypic behavior such as head bobbing, perpetual swaying, male masturbation, pulling on teeth, and sticking trunk in between tusk. *Id.* ¶ 11.

move in the wild because they have to.⁶¹ This conclusion, however, is not supported by the great amount of empirical evidence showing the spatial needs of elephants are vast. For example, Amboseli Elephant Research Group scientist Joyce Poole states that the “evidence that elephants need more space is unmistakable.”⁶² She goes on to explain that in “captivity, confined in small spaces, under the constant command of a trainer and kept in socially deprived conditions, elephants become dysfunctional, unhealthy, depressed, and aggressive. Inactivity leads not only to obesity, but also to foot diseases, joint problems, and arthritis. Female zoo elephants are 31-72% heavier than their wild counterparts.”⁶³

Wild elephants, on the other hand, do not suffer from the same ailments, such as foot disease, arthritis, and weight related diseases, as elephants in captivity. Poole explains that

in Amboseli, where the life histories of over 2,000 free-ranging elephants have been followed for 34 years and where elephants grow up in a nurturing social environment, have the freedom to move, and autonomy over their own lives, elephants do not develop foot or weight problems as they do in zoos.⁶⁴ Of the 2,200 elephants that have lived in Amboseli over 34 years of study, not one has had foot (other than those inflicted by humans), arthritis, or problems with overweight.⁶⁵ In over 34,000 sightings of groups containing 1 to 550 elephants, not one elephant has been seen swaying rhythmically back and forth or showing other neurotic behaviour ultimately caused by lack of space.⁶⁶

There are some zoos that exceed the AZA standard by giving elephants between one and three to four acres to move, however, even this amount of space is far from

⁶¹ See Poole Decl. ¶ 17.

⁶² Id. ¶ 18.

⁶³ Id. ¶ 24.

⁶⁴ Id. ¶ 19.

⁶⁵ Id. ¶ 20.

⁶⁶ Id. ¶ 21.

adequate.⁶⁷ Elephant expert Dr. Schmidt explains that while “such space may be adequate for a couple of domesticated horses or cows, it is far below the necessary space required to meet the biological and behavioral needs of these largest of the living land animals.”⁶⁸ Furthermore, it is important to note that even if a zoo provides a significant amount of outside space, if it is located in a cold and wet northern climate, then the elephant will spend several months confined indoors. By warehousing elephants for the winter, zoos severely limit the amount of space elephants have to move. Many experts conclude that the problems with elephants’ feet and joints will not be alleviated in northern zoos because of the inability for a northern zoo to provide the elephant with adequate space to exercise.⁶⁹ It is precisely this reason why the elephants from the Detroit Zoo were moved to a sanctuary.⁷⁰

Elephant experts consistently agree that elephants in many zoos have an inadequate amount of space for sufficient exercise. For example, elephant expert Dr. Schmidt polled a dozen experienced elephant keepers at a seminar and “only two thought that their elephants had enough space.”⁷¹ Furthermore, in a survey conducted of elephant experts, only 32 percent of the participants said that their elephants receive more than 30 minutes of exercise a day.⁷² Over half of the participants thought that there was a

⁶⁷ See Schmidt Decl. ¶ 4.

⁶⁸ Id.

⁶⁹ See Schobert Decl. ¶ 12. See also RSPCA Study, supra note 59 at 10 (explaining that elephants “must be able to have a good quality of life whatever the weather” and the RSPCA recommends that the indoor space requirements should be at least equivalent to the AZA/EAZA minimum requirements for outdoor space).

⁷⁰ See Hugh McDiarmid Jr., Detroit Zoo to Free Elephants: Animals Going to a Refuge, Detroit Free Press, (May 20, 2004), available at http://www.freep.com/news/metro/zoo20_20040520.htm

⁷¹ Schmidt Decl. ¶ 3.

⁷² See Dimeo-Ediger, The Elephant’s Foot, supra note 43 at 153.

relationship between inactivity and foot disease and 80 percent thought that a priority should be given to giving elephants more exercise.⁷³

The evidence also shows that elephants in zoos live two decades less than elephants in the wild.⁷⁴ One of the main reasons for this difference is because elephants in the wild walk up to 18 hours a day over different substrates.⁷⁵ This amount of exercise protects their feet and joints from deterioration and is in sharp contrast to the 30 minutes a day of exercise many elephants receive in zoos. To prevent and alleviate the foot and joint problems from which elephants in zoos suffer, the amount of space at zoos must be significantly increased to give elephants a sufficient amount of room to exercise.⁷⁶

In conclusion, elephant experts agree that if the current inadequate space and living conditions for elephants at most zoos (consisting of hard flooring, unclean living conditions, and inadequate space to exercise) are eliminated, then the majority of the foot and joint problems in captive elephants would disappear.⁷⁷ USDA should enforce the AWA regulations by requiring zoos to alter the current space and living conditions to reflect a more natural environment for elephants or move their elephants to a place, such as a sanctuary, that can meet their needs.

⁷³ Id. The Dallas Zoo Elephant Foot Care Policy identifies several risk factors for the development of foot problems including, hard substrates, moist and/or dirty environmental conditions, and a sedentary lifestyle. Dallas Zoo, Exhibit 1a.

⁷⁴ See Schmidt Decl. ¶ 4; RSPCA Study, supra note 59 at 6.

⁷⁵ See Roocroft and Oosterhuis, The Elephant's Foot, supra note 14 at 22.

⁷⁶ See, e.g., Schmidt Decl. ¶ 15 (explaining that a zoological park should have 1280 acres land with variable terrain for a heard of 10-20 elephants).

⁷⁷ See Schmidt Decl. ¶ 16; Schobert Decl. ¶ 15; See generally The Elephant's Foot: Prevention and Care of Foot Conditions in Captive Asian and African Elephants (Blair Csuti, et al., eds., 2001); RSPCA Study, supra note 59.

(b) **Examples of Zoos Where Elephants Have or Currently Are Suffering from Chronic Foot and Joint Problems Due to Inadequate Space and Conditions**

Several zoos have voluntarily decided to transfer their elephants to sanctuaries after determining that their facilities were inadequate to provide their elephants with sufficient care. Other zoos have not taken this step and are currently exhibiting elephants even though their inadequate facilities are causing their elephants to suffer from chronic foot and joint problems.

In over 20 years, at least 38 exhibited elephants have died due to chronic foot and/or joint problems.⁷⁸ Because foot and joint problems are wide-spread among exhibited elephants, it is imperative that zoos and USDA act to prevent further elephant deaths. Petitioners request that USDA rigorously inspect zoos by examining elephants' feet, medical records, and living conditions. By reviewing all of these factors, petitioners believe that USDA will find that the health of elephants is declining as a result of the inadequate living conditions provided at exhibitor facilities. Based on this information, USDA must act in accordance with its own regulations by requiring that exhibitors either improve living conditions to meet elephants' needs or transfer elephants to another environment that can meet their needs, such as a sanctuary.

1. **Examples of zoos that have transferred their elephants to sanctuaries after recognizing that the zoo did not have adequate facilities to properly care for the elephants**

San Francisco Zoo

At the San Francisco Zoo, all four elephants, Maybelle, Calle, Tinkerbelle, and Lulu, suffered from foot and joint problems for many years. After the death of two elephants, Maybelle and Calle, the zoo was forced, through strong public pressure, to

⁷⁸ See Chart *infra* pp 34-35.

review the living conditions of its elephants.⁷⁹ The zoo was criticized for holding the elephants in small, antiquated enclosures. The enclosures consisted of 17,000 square feet for the Asian elephants and 10,000 square feet for African elephants.⁸⁰ These small enclosures prevented the elephants from getting sufficient exercise and forced them to stand on hard, dry compacted surfaces.⁸¹

The medical records of Maybelle demonstrate that she suffered from chronic foot and joint problems. The staff at the zoo identified problems with Maybelle's feet and lameness approximately 750 times from September 1983 until her death in January 2004. Calle also suffered from chronic foot and joint problems. The zoo staff identified problems with her feet and lameness approximately 1678 times from Oct 1995 to March 2004.

The number of times these elephants suffered from problems with their feet and lameness is extraordinarily high.⁸² In addition, their conditions were ongoing for numerous years. These on-going problems should have prompted zoo staff to assess the elephants' living conditions as required by the AWA regulations. These regulations state that inadequate space may be indicated by evidence of the animal's poor condition.⁸³ To determine whether the elephants had adequate space and living conditions, the zoo should have looked at whether the enclosure was large enough to allow the elephants to exercise similarly to how the elephants would move in the wild. In this case, 10,000 square feet

⁷⁹ Robert Hollis, Bay Area Zoo to Close Its Elephant Exhibit; After years of criticism and the deaths of two pachyderms, the remaining pair will be sent to other facilities, LA Times, May 9, 2004, at B5.

⁸⁰ Id.

⁸¹ Id.

⁸² See Radiographic Diagnosis, supra note 39 (stating that "[l]ameness in captive elephants is most commonly caused by pododermatitis or degenerative joint disease. Hard surfaces such as concrete, which produce a damp and cold environment, wet and muddy conditions, as well as restricted movement are the major causes of these problems").

⁸³ 9 C.F.R. § 3.128.

for Maybelle (African enclosure) and 17,000 square feet for Calle (Asian enclosure) is extremely small, given that elephants in the wild walk up to 100 kilometers (over 62 miles) in a day.⁸⁴

The regulations further state that animals shall only be exhibited under conditions consistent with their good health and well being.⁸⁵ At the San Francisco Zoo, the elephants were kept on hard surfaces far different from the soft substrate on which elephants walk in the wild. The medical records show that for at least 20 years, the San Francisco Zoo ignored these AWA regulatory requirements and did nothing to significantly alter the living conditions for Maybelle or any of the other elephants who suffered from similar foot and lameness problems.

Rather than changing the living conditions for these animals by giving them more space to exercise and getting them off the hard substrate, the zoo repeatedly gave the elephants painkillers. Maybelle, for example, was given pain-relieving medication repeatedly for at least four years and Calle was given pain-relieving drugs for at least five years. This type of treatment was not successful because it did not improve the condition of their feet. Instead, the condition of their feet continued to deteriorate. The zoo staff even admitted in assessing Maybelle's condition that there was no significant improvement in her mobility since being on the pain killers.⁸⁶ The ongoing physical problems combined with the unnatural living conditions (small enclosure and hard substrate) should have alerted the staff that the elephants' poor health was connected to their inadequate living conditions.

⁸⁴ See Sheldrick Decl. ¶ 4

⁸⁵ 9 C.F.R. § 2.131(c)(1).

⁸⁶ San Francisco Zoo, Maybelle's medical records, April 1, 2003, Exhibit 2a.

Finally, after the death of Maybelle and Calle, the zoo director decided to move Tinkerbelle and Lulu to the Performing Animal Welfare Society (PAWS) Sanctuary. The zoo admitted that its “facilities were outdated and they wanted a better environment for the elephants”⁸⁷ and the zoo believed that “the welfare of both the elephants . . . was at stake.”⁸⁸ To ensure that the zoo does not exhibit more elephants in these small, outdated enclosures, the San Francisco Board of Supervisors passed a law requiring the zoo to meet strict conditions, including devoting at least 15 acres to the elephant habitat.⁸⁹

Tinkerbelle and Lulu were moved to the PAWS sanctuary in November 2004. Unfortunately, the move came too late for Tinkerbelle because she had to be euthanized not long after arriving at PAWS Sanctuary.⁹⁰ Like Maybelle and Calle, she also suffered chronic foot and joint problems.⁹¹ Lulu is the only elephant still alive from the San Francisco Zoo. She also suffered from recurring foot and lameness problems while at the zoo. Now that she is living in a more natural environment at the PAWS sanctuary, she is doing well.

USDA needs to enforce the AWA regulations to prevent more elephant deaths like the ones at the San Francisco Zoo. Despite the medical records showing that its elephants suffered chronic foot and lameness problems, the San Francisco Zoo did not change the elephants’ inadequate living conditions and as a result, three of its four elephants died. These elephant deaths could have been prevented if zoo staff had acted in

⁸⁷ Relocate Elephants, *supra* note 20.

⁸⁸ Patricia Yollin, *Zoo to send 2 elephants to sanctuaries Director defies recommendation to ship pachyderms to other zoos*, SF Gate.com, (June 3, 2004), available at <http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/06/03/BAG8L6VUAH1....>

⁸⁹ SF supes approve conditional ban on elephants at zoos, SFGate.com, (Dec. 7, 2004), available at <http://sfgate.com/cgi-bin/article.cgi?file=/gate/archive/2004/12/07/elephants07.DTL&type...>

⁹⁰ Tinkerbelle Euthanized, *supra* note 21.

⁹¹ Lulu’s medical records indicate that she suffered from foot and lameness problems approximately 988 time from 1975 to 2004.

accordance with the AWA regulations by removing the elephants from their inadequate living conditions before their health had completely deteriorated.

Detroit Zoo

Unlike the San Francisco Zoo, the Director of the Detroit Zoo moved its two elephants, Wanda and Winky, to a sanctuary before ill health due to inadequate living conditions killed them. Detroit Zoo Director Ron Kagan retired the elephants to the warm-weather PAWS sanctuary.⁹² Wanda had developed chronic arthritis and Winky was combating chronic foot problems.⁹³ Kagan found that the elephants could not be cared for properly in the zoo's one-acre elephant exhibit, particularly during the winter when they were confined in small stalls. Kagan concluded that, without normal movement, the elephants' foot and joint disease would become life-threatening.

He explained: "[n]ow we understand how much more is needed to be able to meet all the physical and psychological needs of elephants in captivity, especially in a cold climate."⁹⁴ Kagan explained further that the zoo would need to provide "up to 20 acres of land to provide an adequate environment" for these elephants.⁹⁵ The amount of space needed to adequately exhibit the elephants is far greater than the one-acre enclosure in which Wanda and Winky resided at the Detroit Zoo.⁹⁶

The Detroit Zoo is an example of a zoo acting in accordance with the AWA space and conditions regulations.⁹⁷ Here, the zoo director did not ignore the causes of the elephants' foot and joint problems. He recognized that the health of the elephants was

⁹² Kaufman, *supra* note 23.

⁹³ HSUS, *supra* note 22.

⁹⁴ Hugh McDiarmid, Jr., *Detroit Zoo to Free Elephants: Animals going to a refuse*, (May 20, 04), available at, http://circuswatchwa.org/news/detroit_zoo_frees_elephants.htm

⁹⁵ *Id.*

⁹⁶ *See id.*

⁹⁷ 9 C.F.R. §§ 3.128, 2.131(c)(1), 2.131(e).

being jeopardized because the elephants could not adequately exercise when they were housed in small enclosures, especially during the winter months. This lack of exercise was causing the elephants to develop chronic foot and joint problems. Therefore, consistent with the AWA regulations, the director moved the elephants out of an exhibit that did not have adequate conditions and into a sanctuary with an environment that would benefit their health.

2. Examples of zoos where elephants are currently suffering from chronic foot and joint disease due to inadequate space and conditions and therefore, require immediate USDA inspection

There are numerous zoos throughout the country where elephants are suffering from chronic foot and joint disease caused by inadequate space and living conditions. A few examples of zoos with these problems are the Smithsonian National Zoological Park (National Zoo), Lee Richardson Zoo, Abilene Zoo, Reid Park Zoo, Los Angeles Zoo, and Cameron Park Zoo. As explained below, the elephants in these zoos are being held in inadequate conditions and are experiencing severe foot and joint problems. As a result, USDA must immediately inspect these zoos and enforce the adequate space and conditions regulations.⁹⁸

The National Zoo euthanized a 46-year old female African elephant named Nancy in August 2000 due to severe and chronic foot abscesses that had progressed to osteomyelitis (infection of the bone).⁹⁹ Before she was euthanized, Nancy had difficulty

⁹⁸ Petitioners are aware that USDA is investigating the Lincoln Park Zoo. See Lincoln Park Zoo under scrutiny after 3 rare monkeys die, Associated Press, (May 13, 2005), available at http://abclocal.go.com/wls/news/print_051305_ns_lincoln_park_zoo.html Petitioners argue that the elephants at this zoo should not have been permitted to be exhibited at this zoo because of the cold climate and inadequate living conditions. The elephants were housed in a small antiquated exhibit and had little movement during the cold winter months. These inadequate living conditions likely contributed to the death of the three elephants and therefore violate the AWA regulations. Petitioner recommends that no more elephants be allowed at this zoo.

⁹⁹ National Zoo, Nancy's medical records, August 22, 2000, Exhibit 8a.

standing and developed pressure sores from leaning at night to take the pressure off her feet.¹⁰⁰ In the last months of her life, she was reported to be holding her right foot off the ground and leaning her head against the bars of her indoor stall.¹⁰¹

A January 26, 2000 entry in Nancy's medical records reads, "Reported for lameness left front, stiffness right front . . . All the elephants have been housed indoors continuously for the past few days due to the extreme cold weather. The floors are extremely hard (cement) and this may have exacerbated her lameness. . . . A: Lameness, forelimb R/O digital osteomyelitis, hard substrate. . . . Consider recommending application of permanent soft flooring for this geriatric elephant."¹⁰²

Zoo staff treated Nancy's foot infections with extreme measures, among them frequent intravenous infusions of antibiotics through veins in her feet and stuffing antibiotic "bullets" into the abscessed cracks of her feet by plugging them with "tampons."¹⁰³ The records do not indicate that the staff ever dealt with the cause of her problems. Soft flooring does not appear to have been brought in and no attempt was made to relocate this elephant from these inadequate conditions.

On June 26, 2000, National Zoo veterinarians noted that Nancy had an infected "sole defect" on her right foot that was 10 centimeters long and 5-8 centimeters wide.¹⁰⁴ A month later, the records state that Nancy's right foot was "swollen and painful," noting infection and "breakdown of tissue."¹⁰⁵ This elephants' condition continued to decline. She was euthanized on August 22, 2000.¹⁰⁶

¹⁰⁰ National Zoo, Nancy's medical records, Exhibit 8b.

¹⁰¹ National Zoo, Nancy's medical records, August 19, 2000, Exhibit 8c.

¹⁰² National Zoo, Nancy's medical records, January 26, 2000, Exhibit 8d (Emphasis added).

¹⁰³ National Zoo, Nancy's medical records, Exhibit 8e.

¹⁰⁴ National Zoo, Nancy's medical records, Exhibit 8f.

¹⁰⁵ National Zoo, Nancy's medical records, July 24, 2000, Exhibit 8g.

¹⁰⁶ National Zoo, Nancy's medical records, August 22, 2000, Exhibit 8a

The National Zoo had to euthanize another elephant on January 25, 2006, a 39-year old Asian elephant named Toni suffering from severe arthritis.¹⁰⁷ Medical records for Toni from June 17, 2005 report “very acute lameness” and “keeper reported that she seems more tender in hard surfaces.”¹⁰⁸ The records also note that Toni is “hesitant to go down sternal on concrete” and she was observed “leaning her rear end against the wall as if trying to relieve some weight from the rear legs.”¹⁰⁹ Toni’s medical records document the long term use of Ibuprofen between 1997 and 2001, at which time, it was stopped due to concern about renal toxicity.¹¹⁰ She was later put back on pain relieving medication despite toxicity concerns because of her extreme discomfort.¹¹¹

Another Asian elephant, 57 year-old Ambika, also suffers from lameness. Medical records show that Ambika has repeatedly been on Ibuprofin the past few years.¹¹²

In the six years since the zoo euthanized Nancy from a condition known to be exacerbated by concrete, the National Zoo still keeps the elephants on hard surfaces inside the barn (concrete with one area of poured rubberized flooring) and hard compacted earth. Zoo staff continued to treat the elephants’ symptoms without addressing the cause of their problems – inadequate space and hard substrates.¹¹³

Mel Richardson, DVM, a zoo and wildlife veterinarian with 36-years experience with elephants and other animals observed Toni before she was euthanized and wrote:

¹⁰⁷ See Myra Lopez, national Zoo Euthanizes Ailing Elephant Associated Press, (Jan. 25, 2006), available at <http://www.newsday.com/news/science/wire/sns-ap-zoo-elephant,07435844.story?coll=sns-ap-science-headlines>.

¹⁰⁸ National Zoo, Toni’s medical records, June 17, 2005, Exhibit 8h.

¹⁰⁹ National Zoo, Toni’s medical records, July 3, 2005, Exhibit 8i.

¹¹⁰ National Zoo, Toni’s medical records, Exhibit 8j.

¹¹¹ National Zoo, Toni’s medical records, Exhibit 8k.

¹¹² National Zoo, Ambika’s medical records, Exhibit 8l.

¹¹³ The National Zoo has three outside yards consisting of less than an acre each and an elephant house with concrete and poured rubber flooring (observation by Suzanne Roy when visiting the National Zoo in 2005).

When I saw Toni on January 4th, 2006, I was appalled. I have never seen an elephant in such a debilitated condition. Toni is an elephant at least 2,000 pounds underweight with an almost contorted posture. She moved carefully, placing each foot with deliberation and consideration as to its position. She tried not to put much weight on each step, as if walking on eggs. All the while she was leaning back onto her rear quarters, obviously keeping weight off of her front legs. Her spine looked curved and her pelvis was twisted. The fact that I could see her spine, shoulder blades, and hip bones was beyond belief. I had expected her to be in poor shape, but this was more than I could have ever imagined.¹¹⁴

Dr. Richardson disagrees with the zoos attempt to blame Toni's condition on a leg injury she suffered 20 years ago at another zoo. He states:

Elephants in the wild have sustained fractured legs and even ankylosed carpal joints, like Toni. They have been seen to recuperate and go on to live almost normal elephant lives, albeit with a limp. Had Toni had access to an adequate environment with enough space to roam and a natural substrate, I am certain that she could have better dealt with her injury and would not be in such a condition as today. Toni's exhibit only allowed for exacerbation of her injury. Lack of exercise caused muscle atrophy, removing the muscular support needed to sustain healthy joints and standing on concrete increased the trauma to joint surfaces initiating degenerative joint disease while walking on sand literally rubbed down her pads, thinning her soles and increasing her pain . . .¹¹⁵

Dr. Richardson explains further that veterinarians are trained to prevent pain and suffering, not just treat it.¹¹⁶ The veterinarians at the National Zoo cannot prevent the painful degenerative arthritis because "the cause of the crippling degenerative joint disease is the exhibit itself: the concrete; the packed unyielding abrasive substrate inside and outside; the lack of exercise and normal use of the elephants feet and limbs – climbing, digging, walking, wading into streams, kicking logs, and foraging . . ."¹¹⁷

Dr. Joyce Poole of the Amboseli Elephant Research Project in Kenya agrees with Dr. Richardson's assessment. She explains:

¹¹⁴ Richardson Decl. ¶ 5.

¹¹⁵ Id. ¶ 9.

¹¹⁶ Id. ¶ 14.

¹¹⁷ Id.

I believe that Toni's debilitating condition is caused by much more than an old leg injury. Her condition is indicative of many of the problems experienced by captive elephants and symbolizes the dismal consequences of long-term lack of space and movement. Unfortunately, Toni is yet one more statistic, adding to the overwhelming amount of empirical evidence, showing that elephants *do* need sufficient space and social and environmental enrichment to maintain agility and good physical health.¹¹⁸

The elephants at the National Zoo, including Nancy and Toni, have had ongoing foot and lameness problems for many years and the staff has even suspected their living conditions as a cause of the problem. The medical records show, however, that the zoo failed to act in accordance with AWA regulations by removing the elephants from the inadequate living conditions. As a result, both Nancy and Toni had to be euthanized. Given this information, USDA should ensure that other elephants do not die at National Zoo by immediately inspecting Ambika and the other elephant's feet, medical records, and living conditions and require this zoo to either significantly improve the conditions under which it confines elephants, or relocate the elephants to a sanctuary where their needs can be met.

The Lee Richardson Zoo has two African elephants, Chana and Moki, who have suffered from foot problems and lameness since at least 1993. These elephants are housed on hard concrete flooring and in extremely small enclosures. The two indoor enclosures are 363 and 427 square feet.¹¹⁹ The medical records from this zoo reveal that the elephants' feet are in poor condition and cite to their living conditions as possible

¹¹⁸ Poole Decl. ¶ 33. She explains further that the National Zoo's assessment of Toni is not consistent with her personal observations of elephants in the wild that suffer from leg injury's yet go on to have healthy lives. Id. ¶ 32.

¹¹⁹ Lee Richardson Zoo, Monki and Chana's medical records, Feb. 14, 2005, Exhibit 3a

causes.¹²⁰ For instance, the staff identified that the pads on the elephants' feet had "deteriorated from being on wet cement so much of the time."¹²¹

The elephants at this zoo have had ongoing foot and lameness problems for at least 12 years and the staff has suspected their living conditions as a cause of the problem, however, the medical records show that the zoo has not acted in accordance with AWA regulations by removing the elephants from the inadequate living conditions. Given this information, USDA should immediately inspect the elephants' feet, medical records, and living conditions. Based upon this information, USDA must require this zoo to either significantly improve the conditions under which it confines elephants, or relocate them to a sanctuary where their needs can be met.

The Abilene Zoo has two African elephants, Tanzy and Tanya, with foot problems. The elephants are housed in extremely small enclosures that consist of a 360 and a 324 square feet stalls.¹²² As with the Lee Richardson Zoo, the staff at this zoo highlights the inadequate living conditions. The medical records for Tanya state that the elephant's feet reveal "definite signs of standing in excess water for extended periods of time."¹²³

On an inspection of the zoo in November 2004, the American Zoo and Aquarium Association noted that the floors of the barn were not sloped enough to allow urine and water to run off the floor "forcing the elephants to stand in moisture during the time they are in the barn."¹²⁴ To prevent these elephants from continuing to suffer from foot

¹²⁰ Id., June 2, 2001, Exhibit 3b (citing "Feet in poor condition. Suspect wet yards").

¹²¹ Id., Feb. 7, 2004, Exhibit 3c; See also Id., Dec. 6, 2001, Exhibit 3d (describing Chana's feet as "chronic infections in feet due to substrate issues and long term foot problems.").

¹²² Abilene Zoo, Tanzy and Tanya's medical records, Exhibit 4a. Note that the enclosures at this facility are smaller than the AZA enclosure standards for elephants.

¹²³ Id., July 6, 2004, Exhibit 4b.

¹²⁴ Id. AZA observation notes, Exhibit 4c.

problems caused by their wet flooring and small enclosures, USDA should immediately inspect this exhibitor and require that this zoo act consistently with AWA regulations by not holding these elephants in inadequate conditions.

The Reid Park Zoo elephants, Shaba and Connie, both suffer from recurring foot problems since at least 2000. The indoor enclosure is 1390 square feet and the outdoor enclosure is only approximately 1/3 of an acre.¹²⁵ The zoo staff admits that Connie has chronic problems with her feet.¹²⁶ Zoo records also include an Elephant Management Plan that highlights recommendations from a group of elephant experts called the Elephant Taxon Advisory Group. They recommend larger complex exhibits to allow the elephants to be more active which is needed for their well-being.¹²⁷ In reviewing the recurring foot problems with these elephants and the zoo's small enclosures, it is evident that this zoo is not acting in accordance with USDA's space and conditions regulations. Thus, USDA should inspect these facilities and require the zoo to act consistently with USDA regulations by requiring that zoo give these elephants adequate space and living conditions or relocate them to a sanctuary.

The Los Angeles Zoo's Asian elephant, Gita, has suffered from foot problems since at least 1977. In 1993, the staff noted that her foot problems were chronic.¹²⁸ Although the Los Angeles Zoo has made changes to the living conditions for the elephants, such as giving the elephants access to the yard at night and heating the barn floors, Gita still suffers from ongoing chronic foot problems.¹²⁹ Les Schobert, a former

¹²⁵ Reid Park Zoo, Shaba and Connie's medical records, Exhibit 5a.

¹²⁶ Id., Connie's medical records, Oct 30, 2003, Exhibit 5b.

¹²⁷ Id., Elephant Management Plan, Exhibit 5c (explaining that the zoo is considering breeding Shaba and expanding the facility).

¹²⁸ Los Angeles Zoo, Gita's medical records, Exhibit 6a.

¹²⁹ Schobert Decl. ¶¶ 4-6.

general curator at this zoo believes that Gita continues to suffer from foot problems because “for many years she was confined in a small enclosure and lived on hard concrete flooring”¹³⁰ and continues to live in conditions that do not meet her needs. Specifically, Gita lives in a very small enclosure. She shares approximately 6,000 square feet with another elephant and stands on hard concrete flooring and hard compacted soil.¹³¹ Because Gita’s condition has been ongoing for at least 27 years, the USDA must inspect this zoo by examining Gita’s feet, reviewing the medical records, and assessing her living conditions. Clearly, the changes this zoo made have not been sufficient to improve Gita’s condition. USDA needs to act in accordance with its adequate space and conditions regulations by requiring this zoo to make more significant improvements to Gita’s living condition or move her to a sanctuary environment that will benefit her health.

The Cameron Park Zoo’s African elephants, Tembo and Zoe, both suffer from recurring foot and lameness problems. These problems have been ongoing since at least 1998 for Tembo and 1999 for Zoe. The zoo staff recognizes that the major causes of foot problems include, inadequate exercise and wear on the feet, hard substrates, obesity, and wet and/or dirty conditions.¹³² Although the staff understands the causes of foot problems, it is not evident that any changes have been made in their living conditions. Therefore, USDA should inspect this zoo’s living conditions and the condition of the elephants’ feet and then recommend changes in the living conditions by either

¹³⁰ Id. ¶ 6.

¹³¹ Telephone conversation with elephant expert Les Schobert (June 16, 2005)(explaining that Gita’s condition continues to deteriorate because her living conditions do not meet her needs).

¹³² Cameron Park Zoo, Tembo and Zoe’s medical records, Exhibit 7a.

significantly improving conditions at the zoo or transferring the elephants to a sanctuary to meet the elephants' needs.

The zoos identified above are just a small sampling of the zoos that are currently housing elephants with serious foot and joint problems under inadequate conditions. The record shows that after living under these inadequate conditions for numerous years, the elephants' health will eventually fail to such an extent that they will either die or must be euthanized.¹³³

EXAMPLES OF ELEPHANT DEATHS FROM FOOT AND JOINT RELATED PROBLEMS

Name	Age	Cause of Death	Year of Death	Circus/Zoo
N'Jogu	18	Euthanized, leg problems	1977	LA Zoo
Joyce I	34	Euthanized, foot problems	1979	LA Zoo
Gabriel	11	Euthanized, leg problems	1983	Portland Zoo
Sage	14	Euthanized, broken leg	1984	LA Zoo
Kita	32	Euthanized, arthritis, pneumonia	1989	Detroit Zoo
Sue	46	Euthanized, chronic arthritis	1989	Sacramento Zoo
Babe	44	Euthanized, severe arthritis	1990	Brookfield Zoo
Lisa	32	Euthanized, foot problems	1990	Bowmanville Zoo
Mtoto	22	Euthanized, severe arthritis	1992	Brookfield Zoo
Nosey	47	Euthanized, severe arthritis	1993	Chaffee Zoo
Ted	5 or 6	Euthanized, broken leg	1993	Double M Ranch
Lois	24	Infection in right front foot	1994	Ralph Mitchel Zoo
Tanga	18	Euthanized, severe arthritis	1994	Wildlife Safari
Lois	24	Foot infection spread through her whole body	1995	Circus
Penny	41	Euthanized, severe arthritis	1995	San Francisco Zoo
Missy	35	Euthanized, chronic arthritis	1997	Detroit Zoo
Ola	40	Tranquilized for foot surgery, died 29 days later	1997	Clyde Beaty Cole Circus
Ginny	50	Euthanized, chronic arthritis	1998	Marine World
Bertha	48	Old age and arthritis complications	1999	Nugget Hotel Casino
Judy	33	Euthanized, deformities in	1999	Marine World

¹³³ Fowler, The Elephant's Foot, *supra* note 15 (explaining that the leading reason for euthanizing captive elephants is because of irresolvable foot infection and arthritis).

		rear legs		
F Asian Elephant	?	Euthanized, osteoarthritis in many joints/tuberculosis	1999	Feld Entertainment (Ringling)
Dancer	16	Euthanized, legs in poor condition	2000	Black Beauty Ranch
Nancy	46	Euthanized, chronic arthritis	2000	National Zoo
F Asian Elephant	?	Euthanized, degenerative osteoarthritis	2000	Feld Entertainment (Ringling)
Candy	49	Euthanized, severe arthritis	2001	Denver Zoo
F Asian Elephant	?	Euthanized, chronic osteoarthritis	2001	Feld Entertainment (Ringling)
F Asian Elephant	?	Euthanized, chronic osteoarthritis	2001	Feld Entertainment (Ringling)
Cindy	40	Euthanized, severe arthritis	2002	Point Defiance Zoo
King Tusk	57	Euthanized, had osteoarthritis	2002	Feld Entertainment (Ringling) s
Casey	52	Age and foot infections	2003	Kansas City Zoo
Tammy	53	Euthanized, chronic arthritis	2003	Paws
F Asian Elephant	?	Euthanized, osteoarthritis	2003	Feld Entertainment (Ringling)
F Asian Elephant	?	Euthanized, osteoarthritis	2004	Feld Entertainment (Ringling)
Calle	37	Euthanized, chronic arthritis	2004	San Francisco Zoo
Tina	34	Foot problems	2004	The Elephant Sanctuary (from Vancouver Zoo)
Ginny	58	Euthanized, chronic arthritis	2004	San Antonio Zoo
Kali	59	Euthanized, chronic arthritis	2004	Hogle Zoo
Tinkerbelle	39	Euthanized, chronic foot problems	2005	San Francisco Zoo/PAWS
Toni	39	Euthanized, severe arthritis	2006	National Zoo

In conclusion, to end the painful foot and joint conditions suffered by elephants and to prevent further elephant deaths due to foot and joint problems, USDA should begin its inspections with the zoos identified in this petition and then proceed to inspect all exhibitors with elephants. Because these health problems are wide-spread among exhibited elephants, it is important that USDA give high priority to inspecting all exhibitors with elephants. Petitioner requests that USDA thoroughly and regularly examine the feet of exhibited elephants and their medical records. If the elephants

continue to suffer from chronic foot and joint problems, USDA needs to act in accordance with its regulations by requiring that the zoos either improve their conditions immediately or send the elephants to a better environment that can meet their physiological and psychological needs such as a sanctuary.

III. ENVIRONMENTS SUCH AS SANCTUARIES HAVE HELPED ALLEVIATE AND EVEN ELIMINATE CHRONIC FOOT AND JOINT PROBLEMS IN ELEPHANTS.

Sanctuaries are alleviating and even eliminating foot and joint problems in elephants. The physical improvements in elephants who are moved from zoos and circuses to sanctuaries is strong evidence to support the correlation between foot and joint problems in elephants and inadequate space and conditions at zoos. As a result, zoos that are unable to immediately modify their living conditions to improve the health of their elephants should act consistently with the AWA regulations by relocating their elephants to sanctuaries where the elephants' needs can be met.

Examples of elephant sanctuaries in the United States are the Elephant Sanctuary in Hohenwald, Tennessee and the Performing Animal Welfare Society (PAWS) Sanctuary in San Andreas, California. Both offer spacious natural surroundings, state-of-the-art indoor facilities, and skilled veterinary care to assist the elephants in their recoveries. The elephants that arrived at these sanctuaries after suffering from foot and joint disease for numerous years at zoos or circuses either improved significantly or recovered completely after being able to exercise in sufficient space and having adequate living conditions.

(a) The Elephant Sanctuary

The Elephant Sanctuary encompasses 2700 acres, making it the nation's largest natural habitat refuge developed specifically for the rehabilitation of endangered Asian and African elephants living in captivity.¹³⁴ This amount of space gives the elephants sufficient room to roam, explore, and exercise. The Elephant Sanctuary is licensed by the USDA and Tennessee Wildlife Resources Agency¹³⁵ and currently contains eleven elephants.¹³⁶ The 2700 acres is divided into two separate habitats of 2400 acres for the eight Asian elephants and 300 acres for the three African elephants.¹³⁷ The outdoor habitat of the elephants is comprised of green pastures, old-growth forests, and spring-fed ponds.¹³⁸ The Elephant Sanctuary is 450 times larger than the largest zoo exhibit housing elephants. In contrast to most zoos, where elephants are confined for at least 16 hours standing in their own waste, the elephants at the sanctuary have constant free access to their shelter and outdoor habitat, allowing them to walk whenever they want for many miles each day on natural substrates.¹³⁹ The Asian elephants currently have access to a 11,250 square foot heated barn, and a new 20,000 square foot barn is expected to be completed by October 2005. The African elephants have access to a 10,125 square foot barn.¹⁴⁰ The indoor flooring of the barns are concrete covered with rubber matting, equipped with radiant heat, and pitched to the back for drainage.¹⁴¹ The elephants have constant access to the barns and may enter and leave at their own discretion.¹⁴²

¹³⁴ Buckley Decl. ¶¶ 1, 3.

¹³⁵ Id. ¶ 1.

¹³⁶ Id. ¶ 5.

¹³⁷ Id. ¶ 3.

¹³⁸ Id. ¶ 2.

¹³⁹ Id. ¶¶ 5, 6.

¹⁴⁰ Telephone Interview with Scott Blais, The Elephant Sanctuary (May 17, 2005).

¹⁴¹ Buckley Decl. ¶ 4.

¹⁴² Id. ¶ 5.

By providing adequate space and living conditions, elephants at sanctuaries are recovering from foot and joint problems. These changes in their physical conditions are directly attributed to the changes in their living conditions. An examination of an elephant's foot condition is a good way to determine if the elephant's living conditions are in balance with the elephant's needs.¹⁴³ The co-founder of the Elephant Sanctuary explains that even a moderately active elephant in a natural-habitat environment requires little foot care, and the time that is required for an unhealthy foot to return to health in a natural-habitat environment is relatively short.¹⁴⁴ She further explains that healing can be complete within a few months, and there is generally no reoccurrence of the foot problem.¹⁴⁵ Her statements are supported by her own observations of elephants at the sanctuary. Seven of the eleven elephants at the sanctuary were suffering from severe foot and joint problems while in captivity, but at the sanctuary they have experienced major improvements in their conditions.¹⁴⁶ These include:

1. Tarra performed in zoos and circuses for 21 years, where she suffered from periodic arthritis in her right wrist. This condition has not been observed since her arrival at the sanctuary, where she remains extremely active by walking miles each day up steep hills.¹⁴⁷

2. Jenny was with a circus before coming to the sanctuary. She suffered from a knee injury and foot rot prior to her transfer. Before coming to the sanctuary she was exposed to below-freezing temperatures at night and was housed in a dilapidated facility

¹⁴³ Buckley, The Elephant's Foot, supra note 45 at 53.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Buckley Decl. ¶ 7.

¹⁴⁷ Id. ¶ 7a.

where she regularly stood in her own waste and received inadequate care.¹⁴⁸ Although the knee injury is permanent, her strength and mobility has improved enough for her to climb mountains and maintain a level of activity that has alleviated the need for foot and nail trimmings.¹⁴⁹ She has benefited greatly from the large amount of space at the sanctuary.¹⁵⁰

3. Shirley, one of the oldest elephants at the Sanctuary at age 58, had leg injuries and uneven wear on her foot pads and nails as a result of 30 years in the circus and 23 years in a zoo. Since her arrival at the sanctuary, she has been very active and appears to have no discomfort in her crippled leg, and her nails and pads no longer require trimming.¹⁵¹

4. Bunny lived in a zoo for 45 years, where hard packed earth and concrete flooring caused foot infections that lasted nearly 20 years. At the sanctuary, she was treated with foot soaks in apple cider vinegar (instead of the industry standard of Epsom salts) and other homeopathic remedies. The natural substrates at the sanctuary allowed her feet to recover and prevented the problem from reoccurring, and within six months, her foot infections that she had suffered from for 20 years had healed.¹⁵² The co-founder of the sanctuary explains that getting her off of concrete and onto more yielding natural surfaces allowed her feet to recover and prevented the problem from recurring.¹⁵³ She believes that the “sanctuary environment has reversed a condition that would have eventually cost Bunny her life.”¹⁵⁴

¹⁴⁸ Id. ¶ 7b.

¹⁴⁹ Id. ¶ 7b.

¹⁵⁰ Id.

¹⁵¹ Id. ¶ 7c.

¹⁵² Id. ¶ 7d.

¹⁵³ Id.

¹⁵⁴ Id.

5. During her 30 years at zoos, Sissy suffered from a chronic split nail that healed within six months of proper care and from living at the sanctuary.¹⁵⁵

6. Winkie lived at a zoo for 30 years that kept her chained indoors for six months out of the year. Because she lived in an antiquated zoo exhibit, USDA, consistent with the approach requested by petitioners, told the exhibitor that they needed to improve the exhibit or relocate their elephants. The zoo did not have the funds to improve the exhibit and thus Winkie was transferred to the sanctuary. Upon arriving to the sanctuary, it was determined that she was suffering from severe osteoarthritis and osteomyelitis (bone infections in her feet). Although Winkie still exhibits periodic stiffness, her foot infection cleared-up after several months of treatment at the sanctuary.¹⁵⁶

7. After performing in the circus for over 50 years, Delhi became the first elephant ever to be confiscated by the USDA when an employee of Hawthorn Corporation soaked her feet in full strength formaldehyde, causing severe chemical burns that almost killed her. Delhi was crippled when she arrived at the sanctuary but began to recover, and after 16 months, she no longer needed hospice care. She has become very active and walks many miles each day, which has improved her health and slowed the advancement of her osteomyelitis.¹⁵⁷

8. Zula lived in a wild animal park and was moved to the sanctuary because the director felt that the facilities were not adequate. She arrived with a history of hip problems but after several months of increased activity, her range of motion has

¹⁵⁵ Id. ¶ 7e.

¹⁵⁶ Id. ¶ 7f.

¹⁵⁷ Id. ¶ 7g.

improved. She now walks through terrain that she was not able to walk over in the past.¹⁵⁸

The indoor and outdoor space provided at the sanctuary allows the elephants to roam and exercise freely, which greatly improves their health and well-being. These examples show that when elephants are provided with adequate space and living conditions, their feet and joints are able to heal even when they have been suffering from chronic conditions for many years.

(b) PAWS Sanctuary

The PAWS sanctuary also provides sufficient space for elephants to roam, explore, and exercise by providing 2300 acres for abused, neglected, and abandoned animals.¹⁵⁹ The sanctuary is currently home to eight elephants that have access to 175 acres of outdoor terrain that consists of rolling hills, grass, and some rocky areas.¹⁶⁰ Not only do the elephants have constant access to adequate outdoor space, but they also have unrestricted 24-hour access to a large amount of indoor space in the two barns, which are each 20,000 square feet with hydraulic gates and an indoor Jacuzzi pool.¹⁶¹ This large amount of indoor and outdoor space gives the elephants enough room to move away from their waste and urine, thereby keeping their feet away from harmful bacteria that cause infections. The African elephant barn has heated concrete floors that are sloped for proper drainage, and the Asian elephant barn has dirt floors to provide a more natural substrate.¹⁶² The elephants at the sanctuary receive 24 hour monitoring from trained staff

¹⁵⁸ Id. ¶ 7h.

¹⁵⁹ Derby Decl. ¶¶ 2, 3.

¹⁶⁰ Id. ¶ 3; Telephone Interview with Janice Clark, PAWS (May 16, 2005).

¹⁶¹ Derby Decl. ¶ 3.

¹⁶² Id. ¶ 3.

and medical care from veterinarians who are experienced with treating tuberculosis and foot problems.¹⁶³

Founder and director Pat Derby, who has worked with elephants for 35 years,¹⁶⁴ has observed that many of the elephants kept at zoos accredited by the AZA have severe foot and joint problems, yet when the elephants are transferred to the PAWS sanctuary and given adequate space and living conditions, they have shown great improvements in their health.¹⁶⁵ The elephants at the sanctuary are:

1. Annie is a 49 year old Asian elephant that came to the sanctuary in 1994 from the Milwaukee County Zoo.¹⁶⁶ She lived at the Milwaukee County Zoo, an AZA-accredited facility, where they were confined with chains on cold, wet concrete in an antiquated, undersized enclosure.¹⁶⁷ The Milwaukee County Executives mandated the transfer of Annie to the PAWS Sanctuary in Galt, CA after viewing videotapes of the zoo's inhumane training sessions.¹⁶⁸ Annie suffered from arthritis and major foot problems, which began to improve during her time at the PAWS Galt facility, where she was allowed to roam free on 1.5 acres of grassy pastureland and soft clay. She is now at the PAWS sanctuary in San Andreas, CA and has a very large area of natural substrate, which has allowed her condition to improve greatly.¹⁶⁹

2. Minnie is a 50-year-old Asian elephant who traveled with the circus most of her life. She had chronic joint problems and a very stiff right front leg when she arrived

¹⁶³ Id. ¶¶ 3, 4.

¹⁶⁴ Id. ¶ 1.

¹⁶⁵ Id. ¶¶ 13-14, 22.

¹⁶⁶ Id. ¶ 9.

¹⁶⁷ Id. ¶ 15.

¹⁶⁸ Id. ¶ 17.

¹⁶⁹ Id. ¶ 9. Tammy was also transferred to the sanctuary with Annie. Tammy's foot problems and arthritis were treated daily at the sanctuary, but the advanced condition of her degenerative joint disease led to her death in 2003. Id. ¶¶ 18-19.

at the sanctuary. Her condition has greatly improved as a result of her uninhibited access to large areas of natural substrate.¹⁷⁰

3. As discussed above, the San Francisco Zoo chose to retire Tinkerbelle and Lulu to the sanctuary. Tinkerbelle had such severe foot problems that she had trouble walking, and unfortunately her condition was so far deteriorated that she had to be euthanized shortly after her transfer to the sanctuary.¹⁷¹ Lulu, who suffered from recurring foot problems while at the San Francisco Zoo,¹⁷² is adjusting to life at the sanctuary and currently has no foot or joint problems.¹⁷³

4. Also discussed above, the Detroit Zoo transferred its elephants, Wanda and Winky, to the PAWS sanctuary.¹⁷⁴ Detroit Zoo Director Ron Kagan believed that the zoo could not properly care for and house the elephants during the cold months, when they cannot get outside for adequate exercise.¹⁷⁵ Wanda and Winky suffered from chronic arthritis and foot abscesses, but since their transfer to the sanctuary, both elephants' conditions have improved greatly as a result of being able to move around freely outdoors on natural substrates.¹⁷⁶

5. Mara and "71" are elephants who do not suffer from any foot or joint problems, as a result of having adequate living conditions and access to sufficient space to move and exercise. Mara lived for a short time at a zoo where she was chained, but was soon transferred to a larger facility that provided her with freedom to move. She was

¹⁷⁰ Id. ¶ 10.

¹⁷¹ Id. at ¶ 14; Press Release, San Francisco Zoo, Asian Elephant Tinkerbelle Is Euthanized (March 25, 2005), available at <http://www.sfbay.org/news/pressReleases/285/Tinkerbelle.pdf>.

¹⁷² See infra pp 19-22.

¹⁷³ Derby Decl. ¶ 8.

¹⁷⁴ Id. ¶ 12.

¹⁷⁵ See Hugh McDiarmid Jr., Detroit Zoo to Free Elephants: Animals Going to a Refuge, Detroit Free Press, (May 20, 2004), available at http://www.freep.com/news/metro/zoo20_20040520.htm (quoting a memorandum by Zoo Director Ron Kagan).

¹⁷⁶ Derby Decl. ¶ 12.

10 years old when she came to the sanctuary, and does not have any foot or joint problems.¹⁷⁷ “71” has lived her whole life at the sanctuary, and has never been confined to small spaces. Because of her unrestricted freedom of movement and adequate living conditions, she has had no foot or joint problems.¹⁷⁸

These sanctuary examples show that elephants’ feet and joint problems can improve when they are given enough space to exercise and adequate living conditions.¹⁷⁹ The conditions at the sanctuaries providing large areas of natural substrate, sanitary conditions, and free access to habitat and shelter are similar to the natural conditions that elephants experience in the wild. Such conditions are thus able to meet the elephants’ biological and behavioral needs, unlike the hard flooring, unclean living conditions, and small enclosures that are provided at most zoos. Therefore, when zoos cannot provide adequate space or conditions for elephants, the elephants should be placed in sanctuaries because it has been proven that sanctuaries can provide the physiological and psychological needs of elephants and thereby, improve their health.

IV. CONCLUSION

This petition highlights only a small sampling of the zoos where elephants have chronic foot and joint problems.¹⁸⁰ The problem is wide-spread among exhibited elephants. For the reasons contained herein, petitioner respectfully requests that the USDA issue an interpretive rule and enforce the Animal Welfare Act and USDA’s

¹⁷⁷ Id. ¶ 7.

¹⁷⁸ Id. ¶ 6.

¹⁷⁹ Dr. Michael Schmidt explains that when adequate space and living conditions are provided, the chronic foot and joint problems that elephants experience at zoos would be eliminated. See Schmidt Decl. ¶¶ 15-16 (citing recommendations for protecting the health and well-being of elephants at zoos).

¹⁸⁰ Petitioner will supplement the petition with more medical records from zoos in the next few months.

regulations by requiring that zoos that exhibit elephants fully comply with the agency's adequate space and conditions regulations. Specifically, petitioner seeks the following:

(1) USDA should issue an interpretive rule¹⁸¹ explaining its adequate space and conditions rules for elephants at zoos, circuses and other exhibitors. Petitioner requests that the interpretive rule specify the following:

(a) Inadequate space provided for captive elephants (including indoor and outdoor enclosures) and inadequate conditions (including amount of time confined, type of substrate, and cleanliness of floors) cause foot and joint problems in elephants. The presence of foot and joint problems in elephants is a sign that exhibitors are not meeting the AWA's requirements for adequate space and conditions.

(b) Elephant enclosures shall be large enough to allow exhibited elephants to exercise similarly to how elephants exercise in the wild;

(c) In order for USDA to effectively enforce the adequate space and conditions rules, elephant exhibitors are required to send their medical records to USDA regional inspectors quarterly to review. Inspectors will review the records prior to visiting the exhibit and observe the physical condition of the elephant during their on-site inspections. This visual observation includes picking up the elephants' feet to observe problems with the feet; and

(d) When the agency finds that elephants are suffering from chronic foot and joint problems, the agency will conclude that this is an indication of inadequate care, inadequate space and living conditions. USDA will cite violators of the adequate space and conditions regulations and require that the exhibitor enlarge the space and improve the conditions or move the elephants to a better environment, such as a sanctuary

(e) The agency will consider exhibitors to be in violation of the adequate care, space and conditions regulations when elephants develop chronic foot problems, and the symptoms of those problems are treated (through the use of antibiotics, anti-inflammatory and pain-killing drugs) without addressing the cause (inadequate space and conditions).

(2) USDA should immediately inspect all elephant exhibitors beginning with the zoos discussed in this petition that currently have elephants suffering from chronic foot and joint problems and confiscate elephants in poor condition. These zoos include: National Zoo, Lee Richardson Zoo, Abilene Zoo, Reid Park Zoo, Los Angeles Zoo, and Cameron Park Zoo.

¹⁸¹ Petitioner notes that USDA has established animal welfare "policies." USDA explains that the majority of these "policies" are actually legally defined as "interpretive rules." USDA, Animal Care Answers, at <http://www.aphis.usda.gov/ac/q2.html> (last visited Aug. 25, 2004).

As required by 7 C.F.R. § 1.28, the USDA is required to give this petition prompt consideration. Petitioner requests that the agency provide an answer to this citizen petition within 180 days.

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