**Comments of People for the Ethical Treatment of Animals in Opposition to PRT-05161B Submitted by Nick Sculac d/b/a Serenity Springs**

1. **Introduction**

People for the Ethical Treatment of Animals (“PETA”) urges the U.S. Fish & Wildlife Service (“FWS”) to reject Nick Sculac’s (“Sculac”) (d/b/a Serenity Springs) (“Serenity Springs”) application for a captive-bred wildlife permit (PRT-05161B) (the “application”) because Serenity Springs has failed to demonstrate that its breeding activities will enhance the survival of the species in the wild; has made material false and misleading statements on its application; fails to demonstrate a showing of responsibility—especially given its egregious chronic violations of the Animal Welfare Act, 7 U.S.C. § 2131 et seq. (“AWA”), which have resulted in a now-pending enforcement action—and its likely violations of federal and state law; lacks the expertise, resources, and facilities to implement a true conservation breeding program; and has failed to provide required information. In light of the foregoing, as detailed herein and documented by the accompanying exhibits, the FWS should deny Serenity Springs’s permit application and, instead, initiate an investigation into its likely violations of the Endangered Species Act, 16 U.S.C. § 1531 et seq. (“ESA”), and the Captive Wildlife Safety Act, Pub. L. 108-191 (“CWSA”), and its submission of false statements to the agency.

Pursuant to 50 C.F.R. § 17.22(e)(2), should the agency decide to issue the permit despite our objections, we hereby request notice of that decision at least ten days prior to the issuance of the permit via e-mail to DelciannaW@petaf.org or telephone to 202-309-4697.

1. **Legal Background**

The ESA establishes a national policy “that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the Act].” 16 U.S.C. § 1531(c). In relevant part, the ESA prohibits persons from taking endangered species. The ESA defines the term “take” to include “harass, harm, . . . wound, kill, . . . or to attempt to engage in any such conduct.” *Id.* § 1532(19). “Harass” is defined by regulation as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3. As it pertains to captive animals,[[1]](#footnote-1) such as the tigers and other endangered species at issue, the definition of “harass” expressly exempts “generally accepted” animal husbandry practices and breeding procedures. *Id.* “Harm” means “an act which actually kills or injures wildlife.” *Id.*

Although the ESA regulations do not define “wound,” the verb means “to cause a wound to or in” or “to inflict a wound.” Merriam-Webster Online Dictionary (2011) (Definition of “Wound” (Verb)). The noun is defined as “an injury to the body (as from violence, accident, or surgery) that typically involves laceration or breaking of a membrane (as the skin) and usually damage to underlying tissues.” *Id.* (definition of “Wound” (Noun)); *see also* The American Heritage Dictionary of the English Language (4th ed. 2009) (definition of “Wound” (Noun)) (defining “wound” as “[i]njury to a part or tissue of the body, especially one caused by physical trauma and characterized by tearing, cutting, piercing, or breaking of the tissue”). The Act’s prohibitions on taking, transporting, shipping, and selling endangered species apply to the captive tigers and other endangered species that Serenity Springs maintains.

Section 10 of the ESA gives the FWS limited authority to issue permits to allow otherwise prohibited activities like “takes,” transport, shipment, and sale **only “for scientific purposes or to enhance the propagation or survival of the affected species**.” 16 U.S.C. § 1539(a)(1)(a) (emphasis added). FWS regulations provide an exemption from § 10’s prohibitions for foreign species that are captive-bred in the U.S. if the “purpose” of taking, transporting, shipping, or selling the captive-bred species “**is to enhance the propagation or survival of the affected species**.” 50 C.F.R. § 17.21(g)(ii) (emphasis added). Persons who seek to engage in any of these activities must apply for, and obtain, a captive-bred wildlife permit. *Id.*

An applicant for a CBW permit must include information specified in 50 C.F.R. § 17.22(a)(1), including “[a] full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activitiessought to be authorized by the permit.” *Id.* § 17.22(a)(1)(vii). In deciding whether to grant a CBW permit, the FWS “*shall* consider” the issuance criteria specified in § 17.22(a)(2), including whether “the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.” *Id.* § 17.22(a)(2)(vi). A CBW applicant/registrant must also comply with the general permit conditions set forth in § 13 of the regulations, including that it “maintain[]” any “live wildlife possessed under a permit . . . under humane and healthful conditions.” *Id.* §§ 13.3, 13.41. In addition, § 13.42 provides that “[t]he authorizations on the face of a permit are to be strictly interpreted and will not be interpreted to permit similar or related matters outside the scope of strict construction.”[[2]](#footnote-2)

1. **Argument**
2. **Serenity Springs Captive Breeding Activities Do Not Enhance the Propagation or Survival of the Species.**
   * + 1. **Serenity Springs’s “conservation breeding program” is woefully inadequate.**

As the FWS has made clear, CBW permits authorize otherwise prohibited activities “*provided that the principle purpose [of those activities] is to facilitate conservation breeding*.” FWS, Captive-bred Wildlife Registration under the U.S. Endangered Species Act 2 (Jan. 2012) (emphasis added); *see also id.* (“The registration may be issued when the applicant documents that his activities will serve to enhance propagation or survival of endangered or threatened species, as defined in 50 CFR 17.3 . . . *and the principal purpose of the activities is captive breeding for conservation purposes*.” (emphasis added)).

As defined by the ESA, the term “conservation” means “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.” 16 U.S.C. § 1532(3).

1. **Serenity Springs does not currently have a conservation breeding program.**

As evidenced by the list of births that Serenity Springs submitted with its CBW permit application, while the facility seeks a permit to breed lemurs, cheetahs, three species of leopards, tigers, and hyenas, of this list, the *only* type of animals that Serenity Springs has bred in the past five years is tigers.

Moreover, Serenity Springs’s tiger breeding does not constitute *conservation* breeding. As the FWS has explained elsewhere:

We do not believe that breeding inter-subspecific crossed or generic tigers provides a conservation benefit for the long-term survival of the species. Inter-subspecific tiger crosses and animals of unknown subspecies cannot be used for maintaining genetic viability and distinctness of specific tiger subspecies. Generic tigers are of unknown genetic origin and are typically not maintained in a manner to ensure that inbreeding or other inappropriate matings of animals do not occur.

FWS, Proposed Rule, U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 162 (Aug. 22, 2011). Similarly, in correspondence to Serenity Springs regarding its permit application, a FWS biologist advises that “white tigers are hybrids and should not be bred” and that “hybridization of listed species i[s] prohibited under both the CBW and ESA.” App. 13; *see also id.* (“generic tigers . . . are not suitable for species conservation and cannot be authorized under the CBW”); *see also* FWS, Captive-Bred Wildlife Registration under the Endangered Species Act 2 (Jan. 2012) (“The registration may not be issued or used to sell protected species as pets or for hybridization of any listed species.”).

Serenity Springs’s website features a hybrid white tigers, including a white tiger cub, *see, e.g.*, Serenity Springs Wildlife Center, http://www.serenityspringswildlife.org/(featuring images of a white tiger cub being bottle fed and an adult white tiger). Moreover, even the non-white tigers bred by Serenity Springs—at least twelve in the past five years, according to its application, App. 34—are almost certainly generic, hybrid mixed subspecies.

Experts agree that tigers who are not managed as part of the Association of Zoos and Aquariums’s (“AZA”) Species Survival Plan (“SSP”) Program—which the tigers held by Serenity Springs are not—are in all likelihood generic—and *must be presumed to be*. Statement of Dr. Ron Tilson, Senior Conservation Advisor to the Minnesota Zoo Foundation (Oct. 20, 2011) [hereinafter “Dr. Tilson Statement”].

As experts Dr. Ronald L. Tilson—who served as Coordinator of the AZA’s SSP for tigers for nineteen years and who is now Senior Conservation Advisor to the Minnesota Zoo Foundation—and Philip Nyhus—an Associate Professor of Environmental Studies with particular interest and expertise in tiger conservation who has published extensively in the area—explain, the vast majority of captive-bred tigers in the United States are generic; “[t]hey are no longer Amur or Sumatran or Bengal tigers. They are tiger soup,” and thus breeding these animals serves no conservation purpose. Philip J. Nyhus et al., *Thirteen Thousand and Counting: How the Growing Captive Tiger Populations Threaten Wild Tigers*, *in* Tigers of the World,2ded., pp. 236 (2010). Dr. Steve Olson, Vice President of Federal Relations for the AZA, concurs: “To our knowledge, there are no captive tigers in the U.S. that are purebred subspecies with known pedigrees traceable to their wild-caught founders other than those managed within the AZA Tiger SSP.” *See* Letter to Tim Van Norman, Chief, Branch of Permits, Division of Management Authority (“DMA”), FWS, from Steve Olson, AZA (Aug. 30, 2011). And Serenity Springs has down nothing to rebut this presumption—indeed, despite the FWS’s request for information regarding the specific subspecies of tigers he intends to breed, and for an assurance that hybrids will not be bred, App. 13, the application materials indicate that the applicant has furnished none of this information.

Indeed, a brief look at the commercial sources from which Serenity Springs has obtained tigers in the past makes it clear that it is not working with pure subspecies. For example, according to its application, of the current tigers it holds, Serenity Springs has obtained nineteen of these from GW Exotic Animal Foundation (“GW Exotic”), *see* App. 23-27—including at least one white tiger. (Serenity Springs also obtained a liger from GW Exotic. App. 26.) Joe Schreibovgel, owner of GW Exotic has established a “breeding program” with tigers and claims to be “in the final 2 years of an experimental stage of coming up with a new species. . . . All natural with no interference of man.” GW Exotic Memorial Park, *Breeding Program*.[[3]](#footnote-3) Despite this clear disregard for true species conservation, Serenity Springs obtained tigers from GW Exotic as recently as last year, App. 17, and indicated on its CBW permit application that it intends to continue to acquire animals from this facility, despite the fact that GW Exotic does not have a CBW permit.[[4]](#footnote-4)

Serenity Springs also lists Dirk Arthur as the source of seven of the tigers it currently holds—including at least four white tigers. According to Serenity Springs’s website, one of these white tigers, Bianca, “was born in Dirk Arthur's endangered species breeding program.” Serenity Springs, The Tigers of Serenity Springs, http://www.serenityspringswildlife.org/tigers.php. Needless to say after the foregoing discussion, a true endangered species breeding program does not breed white tigers. Yet not only has Serenity Springs acquired three white tigers from Dirk Arthur as recently as last year, *see*.App. 27, it has also recently transferred a tiger cub to Arthur, App. 34. Arthur exhibits multiple white tigers, as well as a hybrid liger.  *See* Dirk Arthur Wild Magic, Co-Stars, http://dirkarthur.net/costars.  Arthur touts his so-called “endangered species breeding program,” claiming that “Dirk Arthur’s White Bengal Tigers and Snow Tigers are indisputably one of the Earth’s most striking and noteworthy species.”  Endangered Species Preservation Program.  As the FWS recognized in correspondence to Serenity Springs, however, “[t]here is no ‘snow tiger.’”  App. 13.  So-called “snow tigers” are hybrids with recognized health problems.  *Id.*

Indeed, it does not appear that *any* of the facilities from which Serenity Springs has obtained tigers is a member of the AZA SSP, making it all but a foregone conclusion that it is engaging exclusively in unlawful breeding of hybrid generic tigers

For the reasons explained above, Serenity Springs has no current conservation breeding program. To the contrary, as recognized by the FWS and elaborated further below, Serenity Springs is engaging in breeding practices that are *harmful* to conservation and contrary to the ESA.

1. **Serenity Springs’s permit application fails to propose a conservation breeding program with sufficient detail.**

Not only does Serenity Springs currently lack any semblance of a breeding program, it has failed to describe with any level of specificity a proposed conservation breeding program, and for this reason alone the permit must be denied.

CBW permits, like all ESA permits, must be “specific”—they “describe certain circumscribed transactions,” setting forth “specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out.” 50 C.F.R. § 13.42.

Serenity Springs’s CBW permit application is so lacking in details that it makes it impossible to issue the sort of specific, circumscribed permit that is required.

The CBW permit application requires an applicant to “[p]rovide a specific description of how your proposed activities are going to facilitate captive breeding of the species identified . . . , **including your long term goals and intended disposition of any progeny.**” App. 2 (emphasis in original). Serenity Springs utterly fails to provide a *specific description* of the required information. Serenity Springs’s response to this request is purportedly included in Attachment D, *see* App. 2, 28. Attachment D, however, fails to adequately describe *what* Serenity Springs’s proposed activities even *are* in the first instance, let alone how they will facilitate captive breeding. Rather than a description of a breeding program, Attachment D purports to be a bullet point list of “some of the . . . ways” that one can “help fund wildlife preserves.” App. 28. The majority of this document describes projects that do not involve captive breeding and that are spearheaded by groups other than Serenity Springs. The full description of Serenity Springs’s “conservation breeding plan” appears to be:

Through out specific breeding program and working with organizations listed above and to begin a relationship with the AZA and their Species Survival Plan we plan to increase numbers of individuals within each recognized endangered species and subspecies. Maintain the number and diversity of the subspecies currently recognized. Preserve genetic diversity at both species and subspecies levels recognizing the crucial role of both in situ and ex situ approaches for this.

App. 29-30.

This does not describe a program and it certainly does not constitute a “*specific* description of *how* your proposed activities are going to facilitate captive breeding of the species identified.” App. 2 (emphases added). Indeed, this description does not even make reference to specific species, which is particularly concerning given that Serenity Springs initially submitted an application for a permit to breed *twenty-six* different species—a number of which it does not even possess.

1. **Acquisition of Animals**

Serenity Springs’s failure to sufficiently describe how it intends to acquire even the now-shorter list of species it intends to breed and where it intends to house these animals further evidences its fundamental lack of a plan. For instance, brown hyenas, lemurs, and cheetahs are amongst the species for which Serenity Springs seeks a CBW permit to breed, Receipt of Applications for Permit, 78 Fed. Reg. 38731 (June 27, 2013), yet, according to the current inventory submitted with its application, Serenity Springs does not currently possess any animals of these species, App. 23-27.[[5]](#footnote-5) Nor does it specify how it intends to obtain these animals. Instead, Serenity Springs has submitted a laundry list of animal exhibitors, dealers, and breeders, unaware whether any of them possess the requisite CBW permit and, if so, for which species. *See* App. 11; *see also id.* at 12 (“There are other facilities we work with and will be working with to acquiring [sic] other specimens but have not been able to reach a couple of them to get their USDI#.”). In fact, review of the most recent list of CBW permitees made available to PETA by the FWS, CBW Registrant List, reveals that four of the six entities identified do *not* have CBW permits, and that *none* of the listed entities are permitted to breed cheetahs or brown hyenas. At an absolute minimum, then, Serenity Springs must be denied permission to breed these species.

* + 1. **Space for Animals**

Equally unclear is where Serenity Springs intends to *put* any additional animals it acquires—or any animals it breeds. As the FWS explained to Serenity Springs in response to its application, “You have asked for species in addition to those you currently hold but, I am unable to see any space for any additional animals as it appears that all exhibits have animals in residence. We could not authorize any additional species until facilities were available.” App. 13. According to the records that the FWS provided to PETA, Serenity Springs did respond to this observation—except possibly with regard to snow leopards. The applicant has not made clear where it intends to house lemurs, cheetahs, or brown hyenas. Given Serenity Springs’s failure to meet the requirement that it provide “[a] detailed description, including size, construction materials, and protection from the elements, and photographs or detailed diagrams . . . clearly depicting your *existing* facilities where the wildlife will be maintained,” App. 3 (emphasis in original), the application should be denied. That Serenity Springs is not prepared to take on these additional species is evinced by the fact that, while the application includes enclosure descriptions for a number of species, it does *not* include descriptions for hyena, lemur, or cheetah enclosures. *See* App. 43-44. At a bare minimum, then, Serenity Springs should be denied a CBW permit for these species. But given the overall lack of space at this facility, the permit application should be denied in its entirety—especially given Serenity Springs’s history of failing to meet the minimum AWA standards for separating incompatible animals: The applicant currently faces, amongst dozens of other charges for AWA violations, a charge for violating this requirement vis a vis tigers. *See In re Nick Sculac*, AWA Docket No. 12-00223, at ¶ 12 (Feb. 1, 2012) [hereinafter “USDA Complaint”].[[6]](#footnote-6) In addition, in the past five years, two tigers have been killed by cage mates, according to Serenity Springs’s application. *See* App. 34-35.

Complete denial of the permit application is further warranted on this basis because even the enclosures that Serenity Springs does have are, according to the U.S. Department of Agriculture (“USDA”), which administers the AWA, in serious disrepair, as detailed in § III.E.5, *infra*. For example, just earlier this year the USDA cited Serenity Springs for no fewer than eleven inadequate enclosures, which hold a total of twenty-two animals. USDA Inspection Reports (Jan. 7, 2013, at 2-3). The citation notes that this is a repeat violation from inspections conducted on *twenty-two separate occasions. Id.* at 10. The violations included numerous enclosures with exposed protruding nails, shredded and splintered wood, and broken wires with sharp protruding edges. *Id.* at 9-10.

* + 1. **Genetic Vitality**

The application form additionally requires the applicant to supply “documentation showing how your captive population is being managed to maintain its genetic vitality.” App. 2. Serenity Springs provides no such documentation whatsoever—instead it states, without supporting documentation:

Our facility currently manages our captive documentation through written and online reports as well as completed medical records for all animals. Any offspring are documented through a detailed birth record. All animals residing at the facility are also photographed for their record. We are also just beginning a program to microchip all animals as well.

App. 30. Again, these assertions are left unsupported, as, notably unlike most CBW permit applicants, Serenity Springs does not actually attach any of the documents showing the lineage of the animals it intends to breed, instead simply attaching a single *blank* form. *See* App. 32. Further, Serenity Springs *currently faces charges* for failing to “keep and maintain records of the acquisition and disposition” of seven animals, USDA Compl. ¶ 8.c.—including at least four tigers who were born onsite, *compare id.* (listing names), *with* App. 24 (identifying named animals as tigers born onsite)—indicating that it is in fact not capable of ensuring genetic vitality. *See also, e.g.*, USDA Inspection Reports at 3-4 (May 23, 2013, at 2-3; Jan. 7, 2013, at 1-2) (citations for failure to maintain acquisition and disposition records).

Serenity Springs’s failure to ensure genetic vitality is further apparent from its intentional breeding of white tigers, which experts recognize are all highly inbred, and its acquisition of animals from entities with similar unprofessional breeding practices, such as GW Exotic and Dirk Arthur, *see* § III.A.1.a, *supra*. In addition, Serenity Springs attributes two recent tiger cub deaths to “possible genetic issues.” App. 35. Serenity Springs’s recent transfer of a cub to Dirk Arthur further erodes confidence in Serenity Springs’s commitment to an acquisition and disposition protocol that promotes conservation.

* + 1. **Disposition Plans**

For these same reasons, Serenity Springs’s vague statement that “[t]he disposition of the offspring of this project will be to established facilities working within the organizations listed” (i.e., the “AZA, ZAA, RSF, USZA, PAAZB, FCF”) is not a *specific description* of its intended disposition of any progeny, as required. Moreover, it makes clear yet again Serenity Springs’s lack of commitment to true species conservation and genetic vitality. For example, this incredibly vague “plan” allows Serenity Springs to continue dealing with irresponsible breeders like GW Exotic, whose owner Joe Schreibvogel is the president of the deceptively named U.S. Zoological Association (“USZA”). *See, e.g.*, Vince Grzegorek, *United States Zoological Association President Thinks Zanesville Exotic Animal Owner Was Murdered in a Conspiracy*, Cleveland Scene, Apr. 17, 2012.

The equally misleadingly named Zoological Association of America (“ZAA”) advertises itself in the Animal Finders Guide, a trade publication that caters to exotic animal breeders and dealers, hunting ranches, and the pet trade, with the stated purpose of assisting “breeders to show a profit.” Animal Finders Guide 8 (July 2013). And the ZAA’s “accreditation” is widely regarded as dubious at best as the ZAA has “accredited” numerous facilities that do not adhere to minimum animal husbandry standards—let alone breeding standards.

Likewise, the Feline Conservation Federation (“FCF”) has accredited GW Exotic, *see* FCF, GW Exotic Animal Memorial Park, http://www.felineconservation.org/fcf/g.w.\_exotic\_animal\_memorial\_park.htm, despite its irresponsible practice of routinely breeding hybrid animals including ligers and white tigers, *see, e.g.*, GW Zoo Animal Gallery, Ligers, http://gwzoo.org/GWZoo-Liger-Pictures.php; GW Zoo Animal Gallery, Tigers, http://gwzoo.org/GWZoo-Tiger-Pictures.php, and its lengthy USDA enforcement history, including a pending investigation, as discussed on page 7 n.5.

The Rare Species Fund (“RSF”) fares no better. This entity was created by and is directed notorious tiger exhibitor and breeder “Doc” Antle of T.I.G.E.R.S., *see* RSF, http://www.rarespeciesfund.org/. Not only does T.I.G.E.R.S. have an atrocious USDA enforcement history, it has also irresponsibly hybridized endangered species for many years. Indeed, the RSF’s brochure repeatedly touts white tigers, including in an image promoting T.I.G.E.R.S. featuring “four color variations of tigers: . . . standard Bengal, golden tabby, snow white, and royal white”; an image featuring public handling of a white tiger cub described as an “ambassador” for conservation; an image of an adult white tiger at T.I.G.E.R.S.; and a promotion for a show that “features many rare and unique varieties of big cats, including four fantastic colors of Tigers.” RSF, In Support of Outstanding Wildlife Conservation Initiatives. The brochure even features Doc Antle with a liger. *Id.*

In short, virtually every organization that Serenity Springs lists as part of its disposition plan has a documented record of irresponsibility. To issue a CBW permit authorizing such dispositions would contravene the fundamental purpose of the ESA.

And while Serenity Springs lists the AZA for potential disposition, the fact of the matter is that, for the reasons discussed in § III.A.1.c.ii, Serenity Springs simply cannot qualify for AZA accreditation or non-member status and, as such, is not authorized to participate in its breeding programs.

1. **Additional problems with Serenity Springs’s purported conservation breeding**
2. **There have been an unacceptable number of mortalities among tigers bred at Serenity Springs.**

There have also been an unacceptable number of mortalities among tigers bred at Serenity Springs. Although the application lists two tiger cubs born on August 17, 2011, App. 34, it appears from the list of mortalities that three were born, *see id.* at 3 (listing three cubs of the “same litter” who would have been born in August 2011). These three cubs died at two-months, six-months, and one-year of age of “possible genetic issues,” which is obviously of great concern to a program one of the purposes of which is to maintain genetic diversity. *Id.* In addition, the application reports the death of another cub born at the facility in 2010. *Id*. at 2.

In a recent USDA inspection report, it was noted that an employee had observed a female tiger in labor and contacted the attending veterinarian, who instructed the employee to monitor the tiger. The next day the mother and her cub were found dead. According to the inspector, the employee did not appear to have monitored the tiger, as ordered by the veterinarian, “in order to prevent the death of this tiger and her cub.” USDA Inspection Reports (May 23, 2013, at 1-2). Serenity Springs was cited for failing to perform “[d]aily observation of all animals to assess their health and well-being . . . to ensure that timely and accurate information on problems of health, behavior, and well-being is conveyed to the attending veterinarian.” *Id.* at 2.

Two additional tigers born at Serenity Springs were put down in 2003 after attacking a volunteer, who had entered their enclosure while they were present. Eileen Kelley, *Cat-Refuge Worker Survives Attack of 2 Tigers*, Denver Post, July 1, 2003, at B03. (This incident is discussed more fully in § III.E.2.)

Also of great concern, numerous other infant animals have died at Serenity Springs as a result of likely negligence and lack of appropriate veterinary care. For example, Serenity Springs states that a five-week-old black bear cub who died on March 14, 2009 was the “runt of litter died of pneumonia.” *Id.* at 2. However, the USDA Complaint asserts that two bear cubs, including the cub that ultimately died, developed aspiration pneumonia, from inhaling milk into their lungs, as a result of the cubs’ poor handling. USDA Compl. ¶ 20. Moreover, as Dr. Mel Richardson, who has more than thirty years of experience caring for captive wild animals, explains, attributing a cub’s death “to the fact the cub was the runt of the litter . . . is a sign of incompetence. Runts of the litter when hand raised have just as good a chance at survival as the larger cubs . . . .” Statement of Dr. Mel Richardson 2 (July 29, 2013) [hereinafter “Dr. Richardson Statement”]. And, according to Dr. Richardson, aspiration pneumonia “is always directly related to the caretakers’ experience. Aspiration pneumonia is always the fault of the handler. Improper technique and feeding too much volume at too long of a feeding interval is the primary cause. If this facility is allowing aspiration pneumonia to occur, they should not be breeding wild animals. In other words their permit should not be renewed.” *Id.*

Two seven-month-old tigers further died of feline panleukopenia in 2009. App. 34. Since at least 2002, the American Association of Zoo Veterinarians (“AAZV”) has recommended that tigers never before vaccinated for panleukopenia receive at least two and preferably three booster vaccines approximately three weeks apart *after six weeks of age*, as well as an annual booster. AAZV, Tiger SSP Vaccination Recommendations, http://www.aazv.org/?273. It is highly unlikely that two tiger cubs would have died of this viral disease had they been appropriately vaccinated. Dr. Richardson Statement 1.

Serenity Springs has failed to adequately address how it intends to prevent such mortalities in the future. With respect to the deaths of tiger cubs from panleukopenia, for instance, the facility asserts that “we now have a complete veterinary facility with the ability to quarantine animals.” App. 34. But the best method of prevention is clearly vaccinating tiger and other big-cat cubs for panleukopenia and other viral diseases. Likewise, the facility states that the bear cub who was the “runt of the litter” died of pneumonia, but fails to mention that the pneumonia developed as a result of the cub aspirating milk into his lungs, and that it resulted from the facility’s negligence. Therefore, the application fails to discuss how Serenity Springs now trains and monitors staff and volunteers to ensure that this will not happen again.

The application further reports that the parents of the three tiger cubs who died of “possible genetic issues” have now “been neutered and spayed.” *Id.* at 3. But it does not discuss how Serenity Springs selects breeding pairs to minimize the risk of genetic issues, particularly as so many captive tigers are inbred; whether it performs any genetic testing, or the like.

Serenity Springs’s disturbing record of infant mortalities, and its apparent failure to develop appropriate methods of preventing such mortalities in the future, belies its claim to run a legitimate conservation breeding program.

1. **Serenity Springs is not a member of an Species Survival Plan.**

The application form requires applicants to indicate whether they “are participating in an organized breeding program, such as a Species Survival Plan, or contributing data to a studbook” and, if so, to “provide documentation describing the objectives and goals of the program.” App. 2. Serenity Springs is not a member of either the AZA or any of its SSPs, nor does it appear to participate in any other organized breeding program or contribute data to a studbook.

The AZA administers SSPs, the “mission” of which are “to cooperatively manage specific, and typically threatened or endangered, species population[s],” ranging from giant pandas and California condors to African and Asian elephants and lowland gorillas. AZA, Species Survival Plan Programs. An SSP’s primary functions include overseeing the development of a studbook, which documents the pedigree and demographic history of each individual species member held by participants in the SSP; monitoring and documenting all *ex situ* birth, death, and transfer information; recommending breeding decisions to enhance genetic diversity; and developing a breeding and transfer plan. *Id.*; AZA, Studbooks.

CBW registration may be issued only “when the applicant documents that his activities will serve to enhance propagation or survival of endangered species . . . and *the principal purpose* of the activities is captive breeding *for conservation purposes*.” FWS, Captive-Bred Wildlife Registration under the Endangered Species Act 2 (Jan. 2012) (emphases added). The “original intent” of the CBW system was “the encouragement of responsible breeding that is *specifically designed to help conserve the species involved*.” Captive-Bred Wildlife Regulation, 63 Fed. Reg. 48634, 48635 (Sept. 11, 1998) (emphasis added). The FWS has previously voiced concern that “captive-bred animals . . . might be used for purposes that do not contribute to conservation.” Captive-Bred Wildlife Regulation, 57 Fed. Reg. 548-01, 550 (Jan. 7, 1992). Participating in an SSP suggests that the purpose of a breeding program is in fact “for scientific purposes or to enhance the propagation or survival of the affected species,” 16 U.S.C. § 1539(a)(1)(A), as well as that the program is taking appropriate steps to maintain genetic diversity, *see* App. 2 (requiring applicants to provide “documentation showing how your captive population is being managed to maintain its genetic vitality”).

Serenity Springs claims that it plans to “begin the process of working with the AZA and their SSP.” App. 30; *see also id.* at 29 (“[T]o begin a relationship with the AZA and their Species Survival Plan we plan to increase numbers of individuals within each recognized endangered species and subspecies.”). However, it is extremely unlikely that the facility is qualified to work with the AZA or any of its SSPs.

Organizations can participate in an SSP in one of three ways: (1) as an AZA-accredited zoo or aquarium; (2) as a Certified Related Facility; or (3) as an Approved Non-Member Participant. Because Serenity Springs is open on a regularly scheduled, predictable basis, *see* Guided Tour Information, http://www.serenityspringswildlife.org/gptours.php, the facility can only participate as an accredited zoo. AZA, The Guide to Certification of Related Facilities 10 (2013 ed.); AZA Approved Non-Member Participation in SSP Programs.

To obtain accreditation, Serenity Springs must meet the AZA accreditation standards. AZA, The Accreditation Standards and Related Policies 3 (2013 ed.) [hereinafter “AZA Accreditation Standards”]. Serenity Springs fails, or is likely to fail, to meet numerous accreditation standards, including, *but not limited to*:

* Standard 1.1.1 requires that institutions “comply with all relevant local, state, and federal laws and regulations, including those specific to wildlife.” As discussed throughout these comments, there is compelling evidence that Serenity Springs has routinely violated the AWA and other laws and regulations, including many specific to wildlife. A USDA complaint is currently pending against the facility for numerous alleged violations of the AWA, seeking suspension or revocation of Serenity Springs’s AWA exhibitor license. *See supra* p. 7 n.5. The facility is also facing pending charges for maintaining inadequate disposition records, including for tiger cubs born at Serenity Springs. In addition, the Occupational Safety and Health Administration (“OSHA”) recently fined Serenity Springs $7,000 for a “willful” violation of the Occupational Safety and Health Act of 1970 (“OSH Act”), for requiring employees to get into the enclosures with tigers, after a volunteer was seriously injured by one. *See* §§ III.D.1-2, III.D.5, III.E.2, III.E.5.

* Standard 1.4.1 requires that “[a]n animal inventory must be compiled at least once a year and include data regarding acquisitions and dispositions at the institution.” *Id.* As we previously discussed in § III.A.1.b.iii, the facility is facing pending charges for maintaining inadequate disposition records, including for tiger cubs born at Serenity Springs. The USDA has also cited the facility for failing to keep complete disposition and acquisition records for multiple animals. USDA Inspection Reports (May 23, 2013, at 3; Jan. 7, 2013, at 1-2; June 25, 2007, at 2; July 6, 2006, at 1).
* Standard 1.5.2 requires that “[a]ll animals” be held “in appropriate groupings.” Serenity Springs reports that two tigers have died due to separate fights with enclosure mates within a four-year period. App. 29-30. Dr. Mel Richardson, who has more than thirty years of experience as a keeper and veterinarian caring for and studying many species of captive wild animals, including tigers, confirms that it is neither usual nor acceptable for a facility to have this record of deaths from fighting. Dr. Richardson Statement 1.
* Standard 2.4.1 provides that “[t]he veterinary care program must emphasize disease prevention.” The USDA Complaint alleges that, between May 2007 and April 2009, Serenity Springs failed to vaccinate animals against distemper, “or to take steps to eliminate or reduce their risk of contracting the disease,” leading to the deaths of a four-month-old lion, a seven-month-old tiger, two other young tigers, two twelve-week-old lions, an eleven-month-old lion, two one-year-old lions, and a ten-week-old black bear. USDA Compl. ¶ 7. Additionally, as aforementioned, two seven-month-old tigers further died of feline panleukopenia in 2009. App. 34. Since at least 2002, the AAZV has recommended that tigers never before vaccinated for panleukopenia receive at least two and preferably three booster vaccines approximately three weeks apart *after six weeks of age*, as well as an annual booster. AAZV, Tiger SSP Vaccination Recommendations, http://www.aazv.org/?273. It is highly unlikely that two tiger cubs would have died of this viral disease had they been appropriately vaccinated. Dr. Richardson Statement 1.Furthermore, on May 18, 2009, the USDA cited Serenity Springs for failing to “[p]rovide effective drainage to . . . prevent the potential for . . . diseases in all animal enclosures.” USDA Inspection Reports (May 18, 2009, at 4). This was a repeat violation from inspections done on January 20, 2009; September 17, 2007; April 6, 2007; and May 12, 2004. *Id.* The facility still had not corrected the drainage problem *almost five years* after the original date of correction. *Id.* Likewise, Serenity Springs received at least eight citations for failing to maintain sanitary conditions, “to prevent possible . . . disease hazards,” between June 2007 and March 2010. *Id.* (Mar. 9, 2010, at 6-7; Sept. 17, 2007, at 3-4; June 25, 2007, at 4). The facility was also cited at least eleven times for failing to maintain a perimeter fence, which would “effectively restrict . . . animals with contagious diseases from entering the facility.” *Id.* (Feb. 7, 2012, at 1; Sept. 7, 2011, at 4-5; Jan. 19, 2011; Nov. 15, 2010; Mar. 11, 2010; Apr. 8, 2010; Mar. 9, 2010; Jan. 19, 2010; Oct. 1, 2009; May 18, 2009, at 5; Sept. 17, 2007). In addition, the USDA cited Serenity Springs at least five times for failing to administer a proper “pest control program” and/or maintaining conditions that harbored pests. *Id.* (Sept. 7, 2011, at 1, 5, 6; May 18, 2011, at 5; June 2, 2010; June 25, 2007, at 4-5). The agency warned that “[t]hese pests could potentially spread disease to the animals at this facility.” *Id.* (June 25, 2007, at 5).
* Standard 2.4.2 provides that “keepers should not diagnose illnesses nor prescribe treatment.” According to the USDA Complaint, on August 24, 2008, Sculac, who has no veterinary training, diagnosed a tiger, Nala, as having cancer. He unsuccessfully attempted to inject her with euthanasia solution, before ultimately killed her by cutting her throat. USDA Compl. ¶ 15.b. The Complaint also asserts that a leopard and her enclosure mate died tragically in January or February 2010, after the female was observed in “obvious distress,” because Sculac incorrectly diagnosed her as being in labor and failed to contact the attending veterinarian. *Id.* ¶ 7.
* Standard 2.6.1 requires that “[a]animal food preparation and storage . . . meet all applicable laws and/or regulations.” On September 7, 2011, a USDA inspector observed an open bag of animal food on the ground “around fecal material with flies swarming around the bag.” USDA Inspection Reports (Sept. 7, 2011, at 5). This was a repeat violation from inspections on November 15, 2010; March 11, 2010; January 19, 2010; October 2, 2009; May 20, 2009; and September 17, 2007. *Id.* An accumulation of feces was also observed in animal feed on multiple occasions. *Id.* (Jan. 7, 2013, at 3).
* Standard 2.8.1 requires institutions to administer “[p]est control management programs . . . in such a manner that the animals . . . are not threatened by the pests [or] contamination for pests . . . .” Serenity Springs was cited by the USDA for failing to administer an adequate “pest control program” on May 18, 2011 and June 25, 2007. *Id.* (May 18, 2011, at 5; June 25, 2007, at 4-5). The agency also cited the facility multiple times for maintaining conditions with the potential to harbor pests. *Id.* (Sept. 17, 2011, at 1, 5, 6; May 18, 2011, at 5; June 2, 2010; June 25, 2007).
* Standard 9.1 provides that, “[t]he institution, regardless of whether operating on a profit or nonprofit basis, must provide sufficient evidence of its financial support.” As § III.E.1 details, Serenity Spring lacks the financial stability to become an AZA-member zoo. The facility’s most recent IRS Form 990, for the year 2011, shows net assets or fund balances of -$3,238 at the beginning of the year and -$43,096 at the end. 2011 Form 990. And this is hardly an aberration: The 990 for 2007 shows a balance of -$301,015 at the beginning of the year and -$351,401 at the end. 2007 Form 990.
* Standard 10.1.1 requires that “[g]ood housekeeping [b]e regularly practiced.” Serenity Springs utterly fails to meet this standard. The USDA has cited it innumerable times for poor housekeeping, including, but not limited to, maintaining conditions with the potential to harbor pests; keeping food near fecal matter; failing to dispose of expired drugs; allowing standing water with scum and slime to form in animal enclosures; maintaining unsanitary contaminations; and allowing animals’ water to become contaminated. USDA Inspection Reports (Sept. 17, 2011, May 18, 2011; Nov. 14, 2010; June 2, 2010; Mar. 9, 2010; Jan. 19, 2010; Oct. 2, 2009; May 18, 2009; Sept. 17, 2007; June 25, 2007; Apr. 6, 2007; Oct. 8, 2004; May 12, 2004).
* Standard 10.3.4 requires that “[w]hen sunlight is likely to cause overheating of or discomfort to the animals, sufficient shade (in addition to shelter structures) must be provided by natural or artificial means to allow all animals kept outdoors to protect themselves from direct sunlight.” On May 18, 2009, the USDA cited Serenity Springs for failing to provide adequate “protection from the direct sunlight” to fifty-two animals in twenty-five enclosures. USDA Inspection Reports (May 18, 2009, at 4). This was a repeat violation from June 25, 2007, when “[s]everal of the animals with insufficient shade were observed heavily panting.” *Id.* (June 25, 2007, at 3).
* Standard 11.1.1 requires that the institution “be in compliance with all applicable laws and/or regulations regarding employee training for safety in the workplace.” Again, OSHA recently fined Serenity Springs $7,000 for a “willful” violation of the OSH Act, for requiring employees to get into the enclosures with tigers, after a volunteer was seriously injured by one.
* Standard 11.3.3 provides, in relevant part, that “[a]nimals maintained where they will be in contact with the visiting public must be carefully monitored.” On July 7, 2011, the USDA cited Serenity Springs for exhibiting a tiger on a leash that was not large enough, while only a rope and a fifty-inch space separated the tigers from the public. USDA Inspection Reports (July 7, 2011, at 1). On August 29, 2007, the agency again cited the facility for failing to restrain African lion cubs who were in direct contact with the public at photo shoots. *Id.* (Aug. 29, 2007, at 1). Serenity Springs was also cited for placing insufficient distance between the public and two large cats—a leopard and an adult tiger, while each cage was only monitored by one handler. The handlers apparently failed to stop the adult cats from reaching their paws out of the cages or the public from sticking fingers into a cage holding tiger cubs. *Id.* (Nov. 10, 2006, at 1). And, on April 30, 2004, the USDA cited Serenity Springs for holding animals in open crates during public exhibition. The animals continually jumped out of the crates, into which the public was also able to reach. *Id.* (Apr. 30, 2004, at 2).
* Standard 11.8.1 requires perimeter fencing, which is “constructed,” in part, “so that it protects the animals in the facility by restricting animals outside the facility.” Serenity Springs has been cited at least eleven times for failing to maintain a perimeter fence, which would “effectively restrict . . . animals with contagious diseases from entering the facility.” *Id.* (Feb. 7, 2012, at 1; Sept. 7, 2011, at 4-5; Jan. 19, 2011; Nov. 15, 2010; Mar. 11, 2010; Apr. 8, 2010; Mar. 9, 2010; Jan. 19, 2010; Oct. 1, 2009; May 18, 2009, at 5; Sept. 17, 2007).

Furthermore, although Serenity Springs contends that it wants “to begin the process of working with the AZA and their SSP,” App. 30, none of the facilities that it claims that it “works with and will be working with to acquir[e] other specimens” for its breeding program are members of SSPs, *see* App. 5, 12-13.

1. **Sculac has arranged to acquire endangered wildlife from, and dispose of them to, disreputable breeders.**

Also indicative of Serenity Springs’s lack of involvement in protection of endangered species are the close associations that Serenity Springs has with other exhibitors who have well-documented histories of abusing and neglecting animals—including endangered species—and violating applicable state and federal laws. Among these owners of exotic animals are the notorious Joe Schriebvogel of GW Exotic in Oklahoma, the disgraced and now defunct Wesa-A-Geh-Ya facility in Missouri, and Las Vegas-based entertainer Dirk Arthur, who breeds, transfers and uses tigers as props in a magic act.

* + - 1. **GW Exotic/Joe Schreibvogel (Wynnewood, OK)**

In his application, Sculac notes that—in the past four years alone—he has obtained at least *eighteen animals* from “GW Exotic Animal,” operated by Joe Schreibvogel, aka “Joe Exotic.” Of these eighteen animals, twelve were reportedly tigers (of whom eight were reportedly cubs or juveniles). GW Exotic and Schreibvogel (collectively, “GW Exotic”) have *notorious* reputations for abuse and neglect of animals.

GW Exotic has been cited repeatedly by the USDA for violating the minimum standards of care set forth in the federal AWA and was charged with more than *sixty violations* of the AWA in 2005. Compl., *In re: Joe Schreibvogel, et al.*, AWA Docket No. 05-0014 (Apr. 14, 2005). In January 2006, GW Exotic’s USDA license was suspended, it was put on probation for eighteen months, and it agreed to pay a $25,000 civil penalty to settle USDA charges that included dangerous animal handling practices, filthy transport conditions, failure to provide animals with drinking water, insufficient staffing, and verbally abusing federal officials, as well as many charges of filthy, wet, unsafe, and dilapidated enclosures. Consent Decision and Order, *In re: Joe Schreibvogel et al.*, AWA Docket No. 05-0014 (Jan. 26, 2006). The agency noted that GW Exotic had demonstrated "a consistent disregard for, and unwillingness to abide by, the requirements" of the AWA and a “lack of good faith.” Compl., *In re: Joe Schreibvogel, et al.*, AWA Docket No. 05-0014, at ¶ 6 (Apr. 14, 2005).

Following these citations, PETA conducted an undercover investigation of GW Exotic. PETA’s investigator found dead, dying, and injured animals; extremely crowded conditions; a serious lack of basic necessities, such as food, water, and veterinary care; inadequate cages; and untrained and incompetent staff who were intentionally cruel to numerous animals. The problems that we documented included the following:

* Many animals went unfed for days at a time.
* Animals were routinely hit, kicked, sprayed with cold water, struck with rakes and shovels, and blasted with fire extinguishers to break up frequent fights.
* Two healthy adult tigers were killed, and their teeth were reportedly cut out to be given away as gifts.
* Lion and tiger cubs born at the facility were removed from their mothers immediately after birth and then were often declawed—a practice that the USDA has now banned—and taken on the road.
* Lit cigarettes and cigars were given to primates.
* Employees were instructed to falsify paperwork required by the USDA regarding animal feeding schedules and environmental enrichment for primates.
* Animals frequently escaped because of the inadequate cage security and careless personnel.
* Incompatible animals were not separated, and many incurred serious injuries from fighting.

Photos from the investigation are attached and are also available [here](http://www.peta.org/features/gw-photos.aspx). Since PETA’s investigation, GW Exotic has continued to violate the AWA and has been repeatedly cited by the USDA. In fact, as of 2012, the USDA had “three ongoing cases” involving GW Exotic for its continued disregard for minimum standards of care. Letter from USDA Staff Veterinarian to Anna Barry, Senior Biologist, DMA, FWS, Apr. 4, 2012.

* + - 1. **Wesa-A-Geh-Ya (Warrenton, MO)**

The application shows that Sculac obtained at least eight tigers from a squalid and unlicensed roadside zoo called Wesa-A-Geh-Ya in Warrenton, Missouri, prior to the facility’s closure in 2008. Wesa-A-Geh-Ya also transferred tigers to Schreibvogel at that time.

The transfer of animals from Wesa-A-Geh-Ya to Sculac and Schreibvogel in 2008 occurred *more than two years after* Wesa-A-Geh-Ya’s federal exhibitor’s license had been revoked by the USDA. Indeed, on March 1, 2006, Wesa-A-Geh-Ya owners Kenneth and Sandra Smith signed a Consent Order agreeing to the permanent revocation of their USDA license after the USDA filed administrative charges for the Smiths’ willful violations of the AWA. *See* Consent Decision and Order, *In re: Sandra Smith et al.*, AWA Docket No. 05-0004. As discussed later in § III.D.4, these interstate transfers violated the CWSA.[[7]](#footnote-7)

Wesa-A-Geh-Ya’s closure was prompted after a volunteer was attacked by a tiger and lost his leg above the knee, Sarah Whitney, *Tigers Head Out*, Suburban Journal, Sept. 17, 2008, and came about a year after the Warren County Sheriff’s Department cited Wesa-A-Geh-Ya’s owners for violating Missouri law by failing to register prohibited animals, *see* Offense Report, Warren County Sheriff’s Department, June 1, 2007.

* + - 1. **Dirk Arthur (Las Vegas, NV)**

Despite publicly representing that Serenity Springs keeps tigers “until they die” and that Sculac and Serenity Springs “don’t breed” and “neuter [any animal] that comes in,” *see* Sarah Whitney, *Tigers Head Out*, Suburban Journal, Sept. 17, 2008, Sculac provided a tiger cub who had been born at Serenity Springs in April 2011 to entertainer Dirk Arthur, who uses tigers for a magic act called “Dirk Arthur’s Wild Magic” in Las Vegas, App. 34. Sculac has also obtained exotic cats from Arthur. *Id.* at 25-26.

Arthur has been cited by the USDA on numerous occasions for failing to comply with AWA regulations, including unsanitary facilities, and numerous instances in which tigers were kept in hot metal cages in direct sunlight where temperatures reached up to 127 degrees. USDA Inspection Reports for Illusioneering, Inc. and Dirk Arthur, Jan. 15, 2008, June 20, 2007, Aug. 31, 2006, and July 14, 2005.

1. **Serenity Springs’s Purported “Educational” Activities Do Not and Cannot Justify Its Application for a CBW Permit.**

In response to the requirement that it provide “a specific description of how your proposed activities are going to facilitate captive breeding of the species,” for which a permit is sought, App. 2, Serenity Springs makes vague, general comments about how it “educate[s] the public on the plight of species on five continents and what we, as humans need to do to help fund wildlife preserves.” *Id.* at 28. This is not only untrue—it is irrelevant. The CBW regulations provide that “[p]ublic education activities may not be the sole basis to justify issuance of a registration.” 50 C.F.R. § 17.21(g)(3); *see also* FWS, Captive-Bred Wildlife Registration under the U.S. Endangered Species Act (“Please note that registrations are not issued for conservation education only.”). When the agency amended the CBW regulations to codify this policy in 1993, it voiced concern that, in the absence of such limitation, “captive-bred animals . . . might be used for purposes that do not contribute to conservation, *such as . . . for entertainment*.” Captive-Bred Wildlife Regulation, 57 Fed. Reg. 548-01, 550 (Jan. 7, 1992) (emphasis added). In the preamble to the final rule, the agency explained that it has “*sincere doubts about the relative conservation benefits that are provided to non-native species in the wild from the public exhibition of living wildlife*.” Captive-Bred Wildlife Regulation, 58 Fed. Reg. 68323, 68324 (Dec. 27, 1993) (emphasis added).

The rule that “[p]ublic education activities may not be the sole basis to justify issuance of a registration,” 50 C.F.R. § 17.21(g)(3), also reflects the near consensus in the scientific community that using endangered species in exhibitions and entertainment has no impact on public attitudes about conservation. For example:

* In 2001, the AZA set out to measure the impact of zoo visits on visitors’ “conservation-related knowledge, attitude, affect and behavior.” Lynn D. Dierking, *Visitor Learning in Zoos and Aquariums: Executive Summary*, AZA, at i (2001-2002). The study concluded that claims that zoos might have the potential to impact positively guests’ conservation knowledge, affect and behavior, “were not substantiated or validated by actual research.” *Id.*
* A survey at Rosamond Gifford Zoo reported in AZA’s *Communiqué* in 2003 by the zoo’s then-president, Dr. Anne Baker, showed that the zoo’s guests were not looking for a serious educational experience. Instead, the public reported overwhelmingly that a visit to the zoo meant quality time with family members and fun. Lisa Kane, *Contemporary Zoo Elephant Management: Captive to a 19th Century Mission*, *in* An Elephant in the Room: The Science and Well-Being of Elephants in Captivity 87, 94 (Debra L. Forthman et al. eds., 2009) (citing Anne Baker, *From the President*, 3 Communiqué (Dec. 2003)).
* In 2006, a comprehensive study was conducted at five UK zoos aimed at directly measuring the educational impact of a zoo visit. Visitors were asked questions before and after a visit to assess their (1) conservation knowledge; (2) commitment to conservation; and (3) capacity to get involved. No statistically significant changes were measured across the five sites, with the exception of one zoo in which visitors seemed to have a heightened awareness of how they might contribute to conservation. This anomaly was later thought to be an artifact of visitors being in a hurry to enter and therefore being less accurate in their first round of answers than they would have been otherwise, so that it appeared that their knowledge improved after the visit more than it had. Royal Society for the Prevention of Cruelty to Animals, *The Welfare State: Measuring Animal Welfare In The UK 2006,* at 95-96 (2006).
* Another study conducted at Lincoln Park Zoo’s gorilla and chimpanzee exhibits showed that frequent exhibit visitors were no more knowledgeable than first-time visitors and found, no change in attitudes about gorillas or chimpanzees. This lack of improved attitude was absent whether zoo guests were first-time or frequent visitors. K. E. Lukas & S. R. Ross, *Zoo Visitor Knowledge and Attitudes Gorillas and Chimpanzees*, 36 Journal of Environmental Education 33, 33-34, 41, 46-47 (2005).
* In terms of affecting zoo guest action, a study at Brookfield Zoo failed to detect a significant effect on visitors’ intent to get involved in conservation even after multiple visits to an exhibit called The Swamp. Carol D. Saunders & H. Elizabeth Stuart Perry, *Summative Evaluation of the Swamp: a Conservation Exhibit with a Big Idea*, XII Visitor Behavior 4, 5-6 (1997).
* Zoo Atlanta investigated whether its interactive elephant exhibit encouraged active support for elephant conservation. Visitors leaving the zoo were asked to take an already stamped postcard and send it to the White House expressing their views on whether or not the United States should continue its moratorium on the ivory trade. Only 5.9 percent of those who saw the zoo’s elephant show and experienced the interactive elephant display at the zoo mailed the cards. Zoo visitors who saw neither returned the cards at a rate of 3.8 percent. Jeffrey S. Swanagan, *Factors Influencing Zoo Visitors' Conservation Attitudes and Behavior*, 31 Journal of Environmental Education 26, 26-30 (2000).
* A study of visitors to Monterey Bay Aquarium found that any improved commitment to conservation amongst visitors this had disappeared several months after their visit to the facility. L. Adelman et al., *Impact of National Aquarium in Baltimore on Visitors' Conservation Attitudes, Behavior, and Knowledge*, 43 Curator 33-61 (2000).
* Visitors to San Francisco’s UnderWater World Aquarium were asked if they thought that they had learned anything (rather than directly testing their knowledge) and a majority, 78%, felt they had not. Aline H. Kidd & Robert M. Kidd, *Aquarium Visitors' Perceptions and Attitudes toward the Importance of Marine Biodiversity*, 81 Psychological Reports 1083-88 (1997).

Therefore, Serenity Springs’s so-called educational programs do nothing to enhance the propagation and survival of the species, as the ESA and its regulations require.

1. **Serenity Springs Has Made False Statements as to Material Facts in Connection with Its Application.**

In addition to its failure “to disclose material information required,” discussed *infra*, Serenity Springs “has made false statements as to . . . material fact[s], in connection with [its] application.” 50 C.F.R. 13.21(b)(2). This alone warrants denial of Serenity Springs’s permit application. *See id.*

Specifically, Serenity Springs has made numerous false and misleading statements regarding the causes of mortalities at its facility. For example:

* In its permit application Serenity Springs attributes the February 2010 deaths of two leopards—species for which it now seeks a permit to breed—to “old age,” without elaboration. App. 34. According to the USDA, however, these leopards died as a result of Serenity Springs’s willful failure to provide adequate veterinary care and failure to properly handle animals. USDA Compl. ¶ 25. The USDA found that, rather than obtain veterinary care for a female leopard who was in obvious distress, Sculac opined that the animal was giving birth. According to the USDA, “the leopard was discovered dead and hour later.” *Id.* The animal’s body was then left overnight in an enclosure she shared with a male leopard. According to the USDA:

The following morning, the male leopard was discovered lying on top of the female, vocalizing and in distress, whereupon . . . Sculac administered tranquilizers to the male leopard and affixed a noose around his neck to remove him from atop the dead female leopard. . . . Sculac then injected the male leopard with a reversal drug, and removed the noose. The male leopard entered the shelter, appeared to have trouble breathing, and was bleeding from his nose and mouth. He was discovered dead the following morning.

*Id.*

* In its permit application Serenity Springs similarly attributes the July 2009 death of a cougar to “old age” and the death of a tiger—another species that the facility seeks a permit to breed—the same day to “old age put down by vet had cancer.” App. 34. In fact, according to the USDA, both of these animals were euthanized by a volunteer veterinary technician. USDA Compl¶ 23.b. The USDA found that these deaths were caused by Serenity Springs’s failure to provide adequate veterinary care to these two animals, who had “obvious medical problems.” *Id.*
* In its permit application Serenity Springs describes the January 2010 death of a lynx as follows: “13yr old- impaction/died during surgery.” App. 34. According to the USDA, however, the cause of death was likely septicemia, arising from a denial of veterinary care. *See* USDA Compl. ¶ 24. Specifically, the USDA found that Serenity Springs:

failed to obtain veterinary care for a female lynx (Phoebe) suffering from a prolapsed uterus. [Serenity Springs] did not seek veterinary care for Phoebe for one week. Surgery revealed several inches of impacted feces including wood shavings. Phoebe died in [Serenity Springs’s] custody following surgery. The attending veterinarian reported that the suspected cause of death was septicemia due to the length of time of impaction.

*Id.*

* In its permit application Serenity Springs attributes the death of a bear cub in March 2009 to “runt of litter died of pneumonia.” App. 34. According to the USDA, this cub died as a result of willful improper handling by Serenity Springs, which “fed the bears with a bottle in such a manner that both developed aspiration pneumonia, from inhaling milk into their lungs, which caused the death of one of the bears.” USDA Compl.¶ 20*.* The USDA further reports that a second cub died at Serenity Springs on April 9, 2009, of distemper, *id.*—a death that does not even appear on the list of mortalities submitted to the FWS by Serenity Springs.
* Serenity Springs appears to have failed to include at least one other mortality from the list that it submitted as part of its CBW permit application: According to the USDA, on August 24, 2008, Sculac, who is not a veterinarian, diagnosed a tiger named Nala as having cancer and then, rather than obtain veterinary care for her, gave the tiger “three doses of a sedative, unsuccessfully attempted to inject Nala with a euthanasia solution, and ultimately killed her by cutting her throat, and reported to Colorado officials that Nala had died of natural causes.” *Id.* ¶ 15.b. Serenity Springs has not listed any tiger deaths on our around this date in the application that it submitted to the FWS. *See* App. 34.

The FWS should also be skeptical of Serenity Springs’s assertions that many of its mortalities are due to “old age.” Aside from the fact that this is not a cause of death—and that as noted above the applicant has clearly made false and misleading statements about some of these deaths—just earlier this year the USDA inspector found a tiger at Serenity Springs who was “extremely thin such that all his ribs were visible and his hip bones were protruding.” USDA Inspection Reports (Jan. 7, 2013, at 1). The inspector reported: “When asked about this animal, the licensee initially said it was an older animal but, on review of records, this animal was noted to be born in 2007 and acquired by the licensee on 8/26/12.” *Id.*

Because Serenity Springs has made numerous false and misleading statements to the FWS in its CBW permit application—statements that bear directly on its ability to properly care for the animals it seeks a permit to breed—the application should be denied outright.

1. **Serenity Springs “has failed to demonstrate a valid justification for the permit and a showing of responsibility.”**

The FWS must reject the application because Serenity Springs “has failed to demonstrate . . . a showing of responsibility.” 50 C.F.R. § 13.21(b)(3). A “showing of responsibility” is a demonstration that the applicant is “capable” of successfully operating a captive-breeding program. *OSG Prod. Tankers LLC v. United States*, 82 Fed. Cl. 570, 575 (Fed. Cl. 2008) (discussing a “showing of responsibility” in the context of government contracts). “Responsibility determinations are practical, not legal determinations based primarily on the [applicant]’s suitability for a particular job.” Id. (internal quotation marks and alterations omitted) (quoting *Peter Kiewit Sons’ Co. v. U.S. Army Corps of Eng’rs*, 714 F.2d 163, 167 n.18 (D.C. Cir. 1983) (same)).

* + - 1. **The mortalities at Serenity Springs demonstrate that it is unqualified to receive a CBW permit.**

The number and causes of animal mortalities at Serenity Springs make the facility utterly unsuitable to receive a CBW permit. The facility lists an astonishing fifty-nine deaths in the past five years. If approximately 140 animals are at the facility “at all times,” as the Application claims, this means that *almost thirty percent* of the animals maintained by Serenity Springs in the past five years have died. *See* App. 34-35.

Many of the animals at Serenity Springs have died as a result of poor veterinary care, negligence, and improper handling. For example, according to the USDA Complaint, on August 24, 2008, Sulac, who has no veterinary training, diagnosed a tiger, Nala, as having cancer. He unsuccessfully attempted to inject her with euthanasia solution, before ultimately killing her by cutting her throat. USDA Complaint ¶ 15.b. On March 10, 2009, two bear cubs purportedly developed aspiration pneumonia, from inhaling milk into their lungs, as a result of their poor handling. One of the cubs died. *Id.* ¶ 20. In addition, the USDA complaint alleges that, between May 2007 and April 2009, Serenity Springs failed to vaccinate animals against distemper, “or to take steps to eliminate or reduce their risk of contracting the disease,” leading to the deaths of a four-month-old lion, a seven-month-old tiger, two other young tigers, two twelve-week-old lions, an eleven-month-old lion, two one-year-old lions, and a ten-week-old black bear. *Id.* ¶ 7. According to the USDA, Serenity Springs also failed to provide any veterinary care for two cats—a tiger and a cougar—“with obvious medical problems.” *Id.* ¶ 23.b. Instead, without notifying a veterinarian, the facility had a volunteer “euthanize” the animals himself. *Id.* Again, according to the USDA, on January 19, 2010, Serenity Springs did not provide veterinary care for a lynx, Phoebe, with a painful prolapsed uterus, which caused impaction. “Surgery revealed several inches of impacted feces including wood shavings.” *Id.* ¶ 24. Phoebe died of septicemia after surgery, likely “due to the length of time of impaction.” *Id.* The USDA complaint also asserts that two leopards died tragically in January or February 2010, because Serenity Springs failed to obtain veterinary care despite their “obvious distress.” *Id.* ¶ 7. And tigers were killed in fights with enclosure mates on two separate occasions. App. 34-35 (listing deaths on October 10, 2008 and May 15, 2012). Dr. Richardson confirms “[t]hat this is unacceptable and indicates poor management and husbandry practices.” Dr. Richardson Statement 1.

Serenity Springs also states that a five-week-old black bear cub who died on March 14, 2009 was the “runt of litter died of pneumonia.” App. 34. Again, however, as Dr. Richardson, who has more than thirty years of experience caring for captive wild animals, explains, attributing a cub’s death “to the fact the cub was the runt of the litter . . . is a sign of incompetence. Runts of the litter when hand raised have just as good a chance at survival as the larger cubs . . . .” Dr. Richardson Statement 2.

Furthermore, two seven-month-old tigers died of feline panleukopenia in 2009. Serenity Springs asserts that “we now have a complete veterinary facility with the ability to quarantine animals.” Attachment E to the Application 2. But, as far back as at least 2002, the AAZV has recommended that tigers never before vaccinated for panleukopenia receive at least two and preferably three booster vaccines approximately three weeks apart *after six weeks of age*, as well as an annual booster. AAZV, Tiger SSP Vaccination Recommendations, http://www.aazv.org/?273. It is highly unlikely that two tiger cubs would have died of this viral disease had they been appropriately vaccinated. Statement of Dr. Richardson 1.

Serenity Springs also reports that a tiger was “put down” due to a “very large hygroma,” which was impossible to treat. App. 35. However, as Dr. Richardson explains, “there is no reason other than negligence or lack of proper veterinary care that a tiger’s hygroma should get so large that the tiger needs to be euthanized. Hygromas are essentially caused by poor management.” Statement of Dr. Richardson 1.

In a recent USDA inspection report, inspectors noted that the facility acquired *three-day-old* white tiger cubs. One died within twenty-four hours of arriving at Serenity Springs, while another was euthanized. The reported cited the facility for transporting and handling “very young and unhealthy animals,” which likely caused the cubs trauma and unnecessary discomfort and “may have contributed to these animals’ deaths.” USDA Inspection Reports (May 23, 2013, at 3).

In the same inspection report, it was noted that an employee had observed a female tiger in labor and contacted the attending veterinarian, who told the employee to monitor the tiger. The next day the mother and her cub were found dead. According to the inspector, the employee did not appear to have monitored the tiger, as ordered by the veterinarian, “in order to prevent the death of this tiger and her cub.” *Id.* (May 23, 2013, at 1-2).

Finally, the June, 2, 2010 inspection report states that a male tiger died three days after beginning to show signs of declining health, such as losing weight rapidly, drinking lots of water, and having difficulty walking. The staff attempted to contact the veterinarian, but was unable to make contact for four days. During that time, the facility failed to make any attempts to contact another veterinarian. According to the inspector, there was no provision for backup or emergency veterinary care in the written program of veterinary care. *Id.* (June 2, 2010, at 1).

Serenity Springs cannot possibly demonstrate a “showing of responsibility” in light of its history of negligently and inhumanely causing the deaths of numerous animals.

* + - 1. **Serenity Springs’s chronic and egregious AWA violations**

Serenity Springs cannot demonstrate a “showing of responsibility” because it has a history of improperly handling animals; failing to provide animals with veterinary care; maintaining animals in unsafe and unhygienic conditions; failing to adequately guard the public safety; and failing to grant USDA inspectors access to its facilities—all in violation of the AWA. In addition to the egregious alleged violations detailed in the last subsection, Serenity Springs has committed the following AWA violations, *among many others*:

* On May 31, 2013, the USDA cited Serenity Springs for failing to provide its inspectors access to the facility and animals. According to the inspection report, “[t]he licensee was contacted by APHIS officials via phone. When the inspector stated that they needed access to conduct an inspection, the licensee refused to come to the facility, have any other representative come to the facility, or allow anyone present at the facility to conduct an inspection despite having allowed facility employees to accompany inspectors on inspection in the past.” *Id.* (May 31, 2013). This was at least *the tenth* *time* that the agency had cited Serenity Springs for failing to provide it access. *See also id.* (Apr. 15, 2013; Mar. 20, 2013; Dec. 7, 2011; Sept. 3, 2010; Aug. 25, 2009; Apr. 3, 2009; Mar. 9, 2007; Dec. 6, 2006; Nov. 14, 2002).
* On May 23, 2013, a tiger was observed limping. Sculac claimed that he had first noticed the tiger’s condition “last night,” but “no records were made or available for review at the time of the inspection and no contact had been made with a veterinarian to diagnose or treat the condition.” USDA Inspection Reports (May 23, 2013, at 1). This was a repeat violation. *Id.*
* Also on May 23, 2013, the inspector observed that a second tiger was lame. The facility had previously contacted the veterinarian about the tiger “losing weight,” and the veterinarian had started her on antibiotics after finding ulcers in her mouth and a broken tooth. *Id.* However, the tiger had not had a follow-up visit from the veterinarian for at least thirty-three days. “No plan for follow-up on this animal’s condition was made,” nor had anyone “noticed the abnormal gait nor reported it to the veterinarian.” *Id.* This was another repeat violation. *Id.*
* On January 7, 2013, the USDA inspector observed that a male white Bengal tiger was “extremely thin such that all his ribs were visible and his bones protruding.” *Id.* (Jan. 7, 2013, at 1). When asked, Sculac told the inspector that the tiger was an “older animal” but, on review of the records, it was learned that the tiger was born in 2007. No one at Serenity Springs had noted the tiger’s condition or contacted the veterinarian. *Id.*
* Also on January 7, 2013, the USDA inspector reported: “No documentation/records were available to show the disposition of 1 adult Paca which was still listed in the book for current animals on hand. Licensee stated the animal had passed away but could not provide a date or identify which of the two Pacas (the acquisition record listed 1 male and 1 female) had died.” *Id.* (Jan. 7, 2013, at 2).
* Serenity Springs was repeatedly cited by the USDA for allowing animals’ food to become contaminated. *See id.* (Jan. 7, 2013, at 3; Sept. 12, 2011; Nov. 15, 2010; Mar. 9, 2010; Jan. 19, 2010; Oct. 1, 2009; May 18, 2009).
* On November 5, 2010, the USDA cited the facility for failing to follow veterinary instructions. Three tigers had corneal opacities and changes to their eyes, “for which the AV recommended providing increased shade to minimize potential pain and distress from these conditions and to prevent further worsening of these conditions.” *Id.* (Nov. 5, 2010, at 1). No changes were made. This was a repeat violation from June 2, 2010; May 18, 2009; and June 25, 2007. *Id.* More than three years had elapsed since the original correction date. *Id.*
* Again on November 5, 2010, Serenity Springs was cited for failing to follow the attending veterinarian’s directions. The veterinarian had prescribed two medications to treat a sore on a male leopard’s tail, but the facility appears to have discontinued treatment without seeking her advice. *Id.*
* Also on November 5, 2010, the facility was cited for failing to provide over ninety days of *prescribed* analgesic treatment to a male leopard with “severe right forelimb swelling of the elbow, despite the veterinarian’s direction to continue treatment. *Id.* Sculac informed the USDA that he planned to schedule euthanasia “due to a lack of improvement in [the leopard’s] condition.” *Id.*
* On June 2, 2010, the USDA cited Serenity Springs for failing to make provision for backup or emergency veterinary care in the written program of veterinary care, after a tiger who had gone without treatment for days died. *Id.* (June 2, 2010, at 1).
* On March 9, 2010, the USDA once again cited the facility for inadequate veterinary care. The attending veterinarian prescribed medication for two juvenile tigers suspected of having ringworm, but there were no records showing that the tigers were receiving this medication, nor was medication available to review during the inspection. In addition, two other tigers who showed signs of ringworm were being given only half the prescribed dose of medication. The attending veterinarian had not seen the tigers in two months, and there did not appear to be any improvement in their condition during that period. *Id.* (Mar. 9, 2010, at 1).
* Again on March 9, 2010, staff told the USDA inspector that they had first noted a male mountain lion’s “significant” lameness three days earlier and that the attending veterinarian had instructed them to “watch it for now.” *Id.* (Mar. 9, 2010, at 2). However, “[d]uring an interview with the attending veterinarian shortly after the inspection was performed, she stated that she had not been notified of this animal’s condition. There were no records kept at the facility that indicated the staff had attempted to notify the attending veterinarian as stated.” *Id.*
* Also on March 9, 2010, “[a] female leopard, Casey, was noted to have hair loss, reddened tissue, and bone exposed at the tip of her tail. The condition of this lesion [was] serious as the risk of infection into the vertebral column and adjacent tissues [was] high.” *Id.* However, “[t]he attending veterinarian had not been notified of this animals [sic] worsening condition by the licensee.” *Id.* A male leopard housed with Casey was also noted to have “multiple reddened, erosive areas on both nostrils and on his lower right lip.” *Id.* The condition had been reported during the previous inspection, on January 19, 2010, yet Serenity springs had yet to notify the attending veterinarian. *Id.* In addition, the USDA inspector noted that three coatimundis had “significant hair loss on their tails, backs, and sides.” *Id.* Although staff had notified the attending veterinarian, they had not relayed to her “the extent of the hair loss . . . so she was unaware how severely these animals were affected.” *Id.* Finally, the USDA inspector observed a female mountain lion and a female tiger with “hair loss and reddened skin.” *Id.* Staff had not notified the attending veterinarian, even though they were aware of the condition and claimed to be treating it with a Betadine spray. *Id.*
* That same day, several leopards were observed to be exhibiting “self-inflicted lesions on their tails.” *Id.* (Mar. 9, 2010, at 3). Sculac told the inspector that the leopards were receiving the prescribed treatment, but there was no communication with the attending veterinarian as to whether they had responded to the treatment since the veterinarian’s last visit to the facility two months earlier. *Id.*
* On March 9, 2010, the USDA inspector reported: “Two leopards died (one on 2/12/2010 and the other on 2/14/10 according to disposition records) but the attending veterinarian had not been notified of any problems with these animals and only learned that the animals had died during a facility board meeting.” *Id.*
* The USDA has repeatedly cited Serenity Springs for unsanitary conditions, including providing animals with unsanitary water. *See, e.g.*, *id.* (three citations on Mar. 9, 2010, at 6-7; two citations on Sept. 17, 2007, at 3-4; three citations on June 25, 2007, at 4).
* On January 19, 2010, Serenity Springs was cited for failing to provide veterinary care to six tigers and three leopards with hair loss, “thin body appearance,” limping, cloudy corneas, and lesions, among other conditions. *Id.* (Jan. 19, 2010, at 1-2). The facility failed to notify the attending veterinarian about any of these animals’ conditions. *Id.*
* On January 20, 2009, the USDA inspector reported: “The program of veterinary care is not always being maintained effectively. Timely and accurate information on problems of animal health and well-being is not always being conveyed to the attending veterinarian.” *Id.* (Jan. 20, 2009, at 1). As evidence, the inspector noted that staff had not detected during the required daily observation, nor had the attending veterinarian been notified about, the condition of one tiger with abrasions, hair loss, and “inflamed and red colored skin” and a second tiger with an “open wound about 2 wide by 5 long o her belly by her back legs.” *Id.*
* On January 2, 2008, a leopard, Rosebud, was observed “hunched over in an abnormal posture with poor hair coat and open wound on the tail.” *Id.* (Jan. 2, 2008, at 1). Another, Thunder, was observed with “open wounds on the tail.” *Id.* There was no evidence that Serenity Springs staff had detected the leopards’ conditions during the required daily observation, nor had the attending veterinarian been called. *Id.*
* On September 17, 2007, the USDA inspector observed that a tiger, Sitara, had “several puncture wounds on the inside thigh of the rear right leg with some swelling and an open wound about 1” on the outside of the left leg.” *Id.* (Sept. 17, 2007, at 1). Another tiger, Eragon, was limping “with obvious swelling.” *Id.* There was no evidence that Serenity Springs staff had detected the tigers’ conditions during the required daily observation, nor had they contacted the attending veterinarian. *Id.*
* The USDA has repeatedly cited Serenity Springs for exhibiting dangerous animals in a manner that places the public’s safety at risk. *See, e.g.*, *id.* (July 7, 2011, at 1; Aug. 29, 2007, at 1; Nov. 10, 2006, at 1; Apr. 30, 2004, at 2).
* On June 25, 2007 and October 8, 2004, the USDA cited Serenity Springs for failing to dispose of expired medication. *Id.* (June 25, 2007, at 1; Oct. 8, 2004, at 1).

As we discuss in § III.E.5, the USDA has also cited Serenity Springs numerous times for risking injury to the wildlife by failing to maintain its facilities in good repair.

* + - 1. **Serenity Springs’s likely violations of the ESA**
         1. **Likely unlawful transfers of endangered animals**

Tigers are listed as endangered pursuant to the implementing regulations of the ESA, *see* 50 C.F.R. § 17.11, and the ESA prohibits the “sale or offer for sale in interstate or foreign commerce any [protected] species,” and also makes it unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species,” 16 U.S.C. § 1538(a)(1)(E).

The ESA allows for exceptions to these prohibitions in strictly limited circumstances, but reflects a policy of “institutionalized caution,” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978), and was carefully drafted “to *limit substantially* the number of exemptions that may be granted under the Act, . . . *given that these exemptions apply to species which are in danger of extinction*.” Cong. Research Serv., 97th Cong., Legislative History of the Endangered Species Act of 1973, as Amended in 1976, 1977, 1978, and 1980, at 156 (Comm. Print 1982) (H.R. Report 93-412 (July 27, 1973)) (emphases added). Accordingly, § 10 allows Defendants to issue permits for export and import *only* “for scientific purposes or to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(a). A narrow regulatory exemption authorizes one to, in pertinent part, “export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce” tigers bred in captivity in the United States if (a) they are “inter-subspecific crossed or ‘generic’” *and* (2) “***the purpose of such activity is to enhance the propagation or survival of the affected exempted species***.” 50 C.F.R. § 17.22(g). If one does not qualify for this exception, then it is legally required to apply for a permit to sell any tiger, receive any tiger in the course of a commercial activity, and so forth. 16 U.S.C. § 1538(a)(1)(E).

Yet, as Serenity Springs CBW permit application makes clear, it has acquired tigers from numerous commercial entities over the years including, as previously discussed in § III.A.1.a, at least nineteen tigers from GW Exotic and at least seven tigers from Dirk Arthur, amongst others. In all likelihood, these animals were sold and then received by Serenity Springs “in the course of a commercial activity”—i.e., the sale. Because, as also discussed in § III.A.1.a, these transactions involved white tigers and other tigers who were almost certainly “generic,” they by definition have no conservation value, so the purpose of their purchase was not to enhance the propagation or survival of the species. Accordingly the generic tiger exemption would not have applied. And yet there is no indication that the requisite ESA permits were obtained by Serenity Springs or the sellers, indicating that in all likelihood these entities repeatedly engaged in unlawful activities in violation of the ESA.

* + - * 1. **Unlawful takes of endangered species**

Serenity Spring has also taken endangered wildlife, in violation of the ESA. The ESA establishes a national policy “that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the Act].” 16 U.S.C. § 1531(c). In relevant part, the Act prohibits persons from taking endangered species. *Id.* § 1538(a)(1)(B)-(C). The ESA defines the term “take” to include “harass, harm, . . . wound, kill, . . . or to attempt to engage in any such conduct.” *Id.* § 1532(19). “Harass” is defined by regulation as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3. As it pertains to captive animals,[[8]](#footnote-8) such as the wildlife at issue, the definition of “harass” expressly exempts “generally accepted” animal husbandry practices and breeding procedures. *Id.* “Harm” means “an act which actually kills or injures wildlife.” *Id.*

Although the ESA regulations do not define “wound,” the verb means “to cause a wound to or in” or “to inflict a wound.” Merriam-Webster Online Dictionary (2011) (Definition of “Wound” (Verb)). The noun is defined as “an injury to the body (as from violence, accident, or surgery) that typically involves laceration or breaking of a membrane (as the skin) and usually damage to underlying tissues.” *Id.* (definition of “Wound” (Noun)); *see also*The American Heritage Dictionary of the English Language (4th ed. 2009) (definition of “Wound” (Noun)) (defining “wound” as “[i]njury to a part or tissue of the body, especially one caused by physical trauma and characterized by tearing, cutting, piercing, or breaking of the tissue”). The Act’s prohibition on taking endangered species applies to the captive wildlife that Serenity Springs maintains.

As previously discussed, the USDA Complaint asserts that, on August 24, 2008, Sulac, who has no veterinary training, diagnosed a tiger, Nala, as having cancer. He unsuccessfully attempted to inject her with euthanasia solution, before ultimately killed her by cutting her throat. USDA Compl. ¶ 15.b. According to the USDA, Serenity Springs also failed to provide any veterinary care for two cats—a tiger and a cougar—“with obvious medical problems.” *Id.* ¶ 23.b. Instead, without notifying a veterinarian, the facility had a volunteer “euthanize” the animals himself. *Id.* Tigers and certain cougar subspecies are listed as endangered under the ESA. Serenity Springs therefore harmed and killed endangered wildlife, in breach of the ESA’s take prohibitions.

As the previous subsections illustrate, Serenity Springs has also harmed endangered species, in violation of the ESA’s take prohibitions, by failing to provide them adequate veterinary care, failing to treat them as prescribed, failing to adequately monitor their health, housing them in unsafe and unhygienic conditions, exposing them to the risk of disease, and handling them in a manner that causes them trauma, stress, and unnecessary discomfort.

* + - 1. **Likely CWSA violations**

It also appears likely that Serenity Springs has been involved in numerous violations of the CWSA amendment to the Lacey Act, which went into effect in September 2007. The CWSA makes it unlawful to “import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce” “any prohibited wildlife species,” 16 U.S.C. § 3372(a)(2)(C), and defines “prohibited wildlife species” as “any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such a species,” *id.* § 3371(g). While it has some exceptions, including for USDA-licensed facilities and for accredited wildlife sanctuaries that do not breed or commercially trade in animals, *id.* § 3372(e), it is broader than the ESA in that it applies to the prohibited species regardless of whether they are endangered and because it prohibits transfer across state lines even if no commercial activity is involved. *See also* FWS, Captive Wildlife Safety Act: What Big Cat Owners Need to Know (Aug. 2007).

Because it appears from Serenity Springs’s own records that it has acquired prohibited wildlife species from out-of-state entities that are not licensed by the USDA on numerous occasions, it is likely that Serenity Springs has been party to numerous violations of the CWSA. For example:

* According to the inventory that Serenity Springs submitted to the FWS as part of its application, eight of the tigers it currently holds were acquired from from Wes-A-Geh-Ya in Warrenton, MO, in September 2008. App. 25. In fact, according to news reports, Serenity Springs acquired *fifteen* tigers from Wes-A-Geh-Ya at this time. *See* Sarah Whitney, *Tigers Head Out*, St. Louis Post Dispatch, Sept. 17, 2008 (discussing transfer of ten female and five male tigers). Wes-A-Geh-Ya’s USDA license was permanently revoked pursuant to a consent decree two-and-a-half years prior to this transfer, *see* *In re Smith et al.*, No. 05-004, Consent Decision and Order, meaning that in all likelihood the transfer of these tigers across state lines violated the CWSA.
* According to the inventory that Serenity Springs submitted to the FWS as part of its application, it acquired two tigers from Michael Giles of Las Vegas, Nev., on November 14, 2008. App. 25. According to the USDA, Michael Giles is not a USDA-licensed facility and was not at the time of this transfer. Thus, regardless of whether these tigers were donated or sold, their transfer across state lines likely violated the CWSA. *See* 16 U.S.C. § 3372(a)(2)(C); *see also* FWS, Captive Wildlife Safety Act: What Big Cat Owners Need to Know (Aug. 2007).
  + - 1. **OSHA violations**

In 2009, a volunteer suffered wounds to his wrist, forearm, bicep, and tricep when he was mauled by a tiger at the facility. R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010. Again, OSHA fined Serenity Springs $7,000 for a “willful” violation of the OSH Act, on the basis that “[t]he employer is not furnishing employment and a place of employment which are free from *recognized hazards* that are causing or likely to cause death or serious physical harm.” OSHA Citation, No. 0830600, at 2 (July 14, 2009) (emphasis added). The agency explained: “Employees are not physically separated from non-domestic felines while employees are cleaning cages. . . . To abate this violation, the employer must ensure that employees who clean cages are physically separated from non-domestic felines while the employees clean the cages.” *Id.* And, as discussed in greater detail in § III.E.2, *infra*, this was not the first time that OSHA had investigated Serenity Springs for a tiger attack on a volunteer. *See* Dick Foster, *OSHA to Inspect Refuge Where Tigers Mauled Man*, Rocky Mountain News, July 2, 2003, at 11A (discussing 2003 attack by two tigers).

* + - 1. **Serenity Springs’s inability to comply with applicable federal regulations**
         1. **Inhumane and unhealthy conditions**

The FWS cannot issue Serenity Springs the requested permit because the facility subjects endangered wildlife to inhumane and unhealthy conditions. Demonstrating a “showing of responsibility” means demonstrating that Serenity Springs could meet the requirements of a CBW permit. *See OSG Prods. Tankers LLC*, 82 Fed. Cl. at 575. However, the facility cannot show that it would meet the requirements of a CBW permit because it cannot show that it will comply with 50 C.F.R. § 13.41, which mandates that “[a]ny live wildlife possessed under a permit must be maintained under humane and healthful conditions.” *Id.*; *see also id.* § 13.2 (“The regulations contained in this part provide uniform, rules, conditions, and procedures for the . . . issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this subchapter B.”).

As these comments amply show, Serenity Springs has a long and egregious history of causing the deaths of animals; failing to provide animals veterinary care; failing to provide prescribed medical treatment to animals; housing animals in unsafe and unhygienic conditions; feeding them food at risk of contamination; providing them contaminated water; failing to perform, or incompetently performing, the required daily observation to monitor their health; and handling the animals in a manner that causes them trauma, stress, and discomfort. *See* §§ III.A.1.c.i, III.D.1-2, III.E.5.

* + - * 1. **Access**

The implementing regulations require that “[a]ny person holding a[n ESA] permit . . . shall allow the Director’s agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy, any permits, books, or records required to be kept by regulations of this subchapter B.” 50 C.F.R. § 13.47. In addition, the regulations provide that,

[b]y accepting [a CBW] permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this Subchapter B; and any wildlife or plants kept under authority of the permit.

*Id.* § 13.21(e)(2).

Serenity Springs also cannot show that it will comply with the requirements that it allow the FWS access to its premises, records, and animals. As previously discussed, the USDA has cited the facility for failure to provide agency inspectors access at least *ten times*. *See* USDA Inspection Reports (May 31, 2013; Apr. 15, 2013; Mar. 20, 2013; Dec. 7, 2011; Sept. 3, 2010; Aug. 25, 2009; Apr. 3, 2009; Mar. 9, 2007; Dec. 6, 2006; Nov. 14, 2002). There is no reason to believe that Serenity Springs will be more likely to comply with the ESA regulations, than it is with the AWA regulations. The FWS should therefore deny Serenity Springs’s application for a CBW permit.

* + - 1. **Serenity Springs’s inability to comply with conditions of the CBW permit**

Serenity Springs also cannot satisfy the requirement that it “demonstrate . . . a showing of responsibility,” 50 C.F.R. § 13.21(b)(3), because it cannot show that it will “strict[ly] observ[e]” “all applicable foreign, state, local or other federal law,” as the CBW permit requires and this section amply illustrates. *See, e.g.*, CBW Permit No. MA808265-0 (“The validity of [this CBW] permit is also conditioned upon strict observance of all applicable foreign, state, local or other federal law.”).

* + - 1. **Serenity Springs appears to lack the requisite state permits.**

Colorado law prohibits the possession of wildlife unless specifically permitted. *See* Colo. Rev. Stat. § 33-6-109(1). While Serenity Springs has submitted permits for some of the species it seeks a permit to breed, a number of these species are also notably absent from the state permits that were submitted. Specifically, the application materials provided to PETA indicate that Serenity Springs lacks the requisite state permit for cheetahs, clouded leopards, brown hyenas, and any lemurs other than ring-tailed lemurs. *See* App. 16-22; *see also* Colo. Rev. Stat. § 33-6-109(1). These apparent violations warrant particular scrutiny given that Serenity Springs’s director has previously been cited by “the Colorado Division of Wildlife for illegally keeping bear and tiger cubs off the Serenity Springs property.” R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010.

Because it appears from the face of its own application that Serenity Springs lacks the state permits needed to engage in the activities for which it seeks a CBW permit—and given Serenity Springs’s prior violations of state wildlife laws—the FWS should deny its permit application.

* + - 1. **Other laws**

Sculac was recently convicted of theft, and sentenced to spend six years at a halfway house, in connection with the 2009 attack by a tiger on a volunteer (*see* § III.D.5, *supra*). R. Scott Rappold, *Big Cat Sanctuary Co-Founder Guilty but Avoids Prison Time*, The Gazette, Oct. 26, 2010. Although the USDA was still investigating and had not assessed any fines for the incident, Sculac told the victim of the attack that Serenity Springs had in fact been fined $40,500. He claimed that he would lose his house, the sanctuary would be shut down, and the animals euthanized if the victim did not pay the fine—which the victim did, delivering a check to Sculac for $40,500. R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010; *see also* USDA Compl. ¶ 3. Noting Sculac’s *two prior felony convictions*, 4th Judicial District Judge David Gilbert told him: “You’ve been a con artist. You’ve been misusing people. You’ve been picking on people who are in a vulnerable state.” R. Scott Rappold, *Big Cat Sanctuary Co-Founder Guilty but Avoids Prison Time*, The Gazette, Oct. 26, 2010.

This wasn’t the first time Sculac was accused of being a con artist. In 2002, he was arrested on four counts of theft, accused of taking payment in two businesses for services and supplies that he failed to deliver. Requesting bail be set at $100,000, a deputy wrote: “[Sculac] has shown proficiency in obtaining large sums of money by deception.” R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010.

1. **Serenity Springs’s Expertise, Facilities, and Other Resources Are Inadequate.**

In considering an application, § 17.21 of the regulations requires the FWS to consider “whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife.” 50 C.F.R. § 17.21(g)(3). Serenity Springs lacks the finances, the expert staff, the breeding experience, and the facilities necessary to operate a successful and humane conservation breeding program.

1. **Serenity Springs lacks the financial resources to qualify for a CBW permit.**

Serenity Springs lacks the financial resources to run a conservation breeding program. Serenity Springs’s most recent IRS Form 990, for the year 2011, shows net assets or fund balances of -$3,238 at the beginning of the year and -$43,096 at the end. 2011 Form 990. The 990 for 2010 and 2009 show end balances of -$3,238 and $0, respectively, while the 990 for 2007 shows a balance of -$301,015 at the beginning of the year and -$351,401 at the end. 2010 Form 990; 2009 Form 990; 2007 Form 990. It does not appear that the facility filed a Form 990 for 2008. *See* 990 Finder, Foundation Center, http://990finder.foundationcenter.org/990results.aspx?990\_type=&fn=serenity+springs&st=CO&zp=&ei=&fy=&action=Find.

The facility has repeatedly discussed its financial difficulties. In 2001, Sculac told the *Rocky Mountain News* that Serenity Springs had “almost run out of meat” and that it had been forced to use “money set aside for the payment on the meat truck” to buy food instead. Deborah Frazier, *Donations Drop, but Big Cats Still Need Meat*, Rocky Mountain News, Oct. 10, 2001, at 14A. Two years later, he told the *Denver Post* that he had overdrawn the business account by more than $22,000 and, as a result, that the company that delivered food for the animals had stopped its bimonthly delivery. Eileen Kelley, *Cat-Refuge Worker Survives Attack of 2 Tigers*, Denver Post, July 1, 2003, at B03. The *Rocky Mountain News* described “periodic panics when contributions fall short.” Deborah Frazier & Gary Gerhardt, *Last Refuge for Big Cats? Colorado Sanctuaries Try to Take up Slack from Sites Elsewhere*, Rocky Mountain News, Sept. 9, 2003, at 6A. Then, again, in 2006, the facility reported that its food supplies were running short. Deborah Frazier, *Big-Cat Sanctuary in a Jam*, Rocky Mountain News, June 26, 2006, at 15A. And, in 2008, Sculac referred to the effort to pay the facility’s $19,000-a-month tab as “[d]ay-to-day.” Rick Tosches, *Sanctuary from the Wild World*, Colorado Springs Independent, Sept. 18, 2008, at 8. Indeed, the “property has been in and out of foreclosure several times.” R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010. In 2006, the facility only survived by selling land. Deborah Frazier, *Exotic Wildlife Sanctuaries Call $100,000 Bond Plan Unbearable*, Rocky Mountain News, May 7, 2007, at 20.

Sculac himself has been beset by financial woes. In 2005, his home was foreclosed and he “lost the contracting business that helped supplement the sanctuary’s $250,000 annual expenses.” Claire Martin, *A Colorado Life: Caring for Big Cats Made Refuge Owner Purr*, Denver Post, Aug. 20, 2006, at C06. He was sued in 2007 by a former attorney for $5,794 in unpaid legal bills. In 2008, he was sued over $2,700 in unpaid medical bills. And, in 2010, a motorcycle Sculac bought for $14,000 was repossessed. R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010.

Serenity Springs’s financial vulnerability is a serious concern. Big-cat sanctuaries regularly close due to funding shortfalls, and placing the animals at other facilities can be a Herculean task. *See, e.g.*, Jim Douglas, *Perilous Times for Big Cat Sanctuary in Wise County*, WFAA, July 20, 2010; R. Scott Rappold, *Big Cats Running Out of Shelter*, The Gazette, Aug. 21, 2006; Deborah Frazier, *Big Cats Find Serenity Ranch for Ex-Pets, Zoo Animals Devours Money Like Raw Meat*, Rocky Mountain News, May 24, 1998, at 20A; Tamara Lush, *Big Cats, Bad Economy*, Canadian Press, Jan. 21, 2011; Dan E. Way, *Lions and Tigers Transitioning Nicely to Life in Pittsboro*, The Herald-Sun, Nov. 17, 2010. And captive breeding is often prohibitively expensive. Noel F.R. Snyder et al., *Limitations of Captive Breeding in Endangered Species Recovery*, 10 Conservation Biology 338, 343 (Apr. 1996).

1. **Serenity Springs lacks the expert staff necessary to qualify for a CBW permit.**

Serenity Springs has also exposed an alarming lack of knowledge about endangered species and their care. In 2003, for example, a volunteer was attacked when he entered a cage to feed two tigers. One cat took hold of the volunteer’s legs, and the other jumped him from behind, knocking him down. Sculac, who had entered the cage with the volunteer, was forced to beat the tigers with a shovel until the other man could escape. The volunteer was hospitalized for days with deep cuts to his scalp, leg, and arm. Dick Foster, *OSHA to Inspect Refuge Where Tigers Mauled Man*, Rocky Mountain News, July 2, 2003, at 11A. This attack would never have occurred if Serenity Springs had moved the big cats into shifting cages while cleaning and feeding to prevent direct physical contact—as is standard industry practice. Alan H. Shoemaker et al., Zoo Guidelines for Keeping Large Felids in Captivity. Instead, “Sculac said the worker invited harm by wearing shorts,” insisting “[t]hey get set off by bare legs,” Andrea Brown, *Snow Removal at Big-Cat Ranch near Calhan Cost Nearly $15,000*, AP Alert—Colorado, Jan. 25, 2007—a claim which Dr. Mel Richardson, who has thirty years of experience with captive wild animals, called an “outlandish myth[] and legend[].” Dr. Richardson Statement 1. Dr. Richardson states: “[I]f the management of Serenity Springs is claiming this, then in my opinion they do not have the expertise to operate a Captive-Bred Wildlife facility. This claim is simply not true.” *Id.* Totally ignoring the unpredictability of large predators, Sculac has also made the outrageous claim that “[i]f you spend too much time in the [tigers]’ cage, they’ll let you know. You kind of get eyes in the back of your head.” *Id.*

Unfortunately, this “knowledge” failed Serenity Springs again in 2009 when a volunteer suffered wounds to his wrist, forearm, bicep, and tricep when he was mauled by a tiger at the facility. R. Scott Rappold, *Big Cat Sanctuary Co-Founder Accused of Theft*, The Gazette, Oct. 1, 2010. As previously discussed in § III.D.5, OSHA fined Serenity Springs $7,000 for a “willful” violation of the OSH Act, on the basis that “[t]he employer is not furnishing employment and a place of employment which are free from *recognized hazards* that are causing or likely to cause death or serious physical harm.” OSHA Citation, No. 0830600, at 2 (July 14, 2009) (emphasis added). The agency explained: “Employees are not physically separated from non-domestic felines while employees are cleaning cages. . . . To abate this violation, the employer must ensure that employees who clean cages are physically separated from non-domestic felines while the employees clean the cages.” *Id.* The citation identified shifting cages as “one feasible and acceptable method to correct this hazardous practice.” *Id.* Sculac’s woefully deficient knowledge of endangered species and their care directly led to the serious injury to two volunteers.

The other staff also lacks the requisite expertise to run a conservation breeding program. Most concerning of all is that either a member of the staff or a volunteer without the required expertise caused a bear cub to aspirate milk into his lungs and die of pneumonia as a result. *See* USDA Compl. ¶ 20. According to Dr. Richardson, “this is always directly related to the caretakers’ experience” and “is always the fault of the handler. Improper technique and feeding too much volume at too long of a feeding interval is the primary cause. If this facility is allowing aspiration pneumonia to occur, they should not be breeding wild animals.” Dr. Richardson Statement 2.

Yohani Bagerrela, the head caretaker at Serenity Springs, previously served as an animal handler and caretaker at GW Exotic Animal Park. App. 36. As previously discusseddiscussed in § III.A.1.c.iii.1, GW Exotic has a history of egregious and often intentionally cruel abuse. The other animal caretaker, Devon DeVries, apparently has only worked in animal care at Serenity Springs, and the application does not include any information about any relevant education or training that DeVries might have. App. 36.

The head veterinarian, Dr. Melanie Marsden, has been Serenity Springs’s attending veterinarian for fifteen years—a dubious qualification given the numerous times the USDA has cited the facility for failure to provide adequate veterinary care. Other than her work at Serenity Springs, Dr. Marsden appears to spend the majority of her professional time as a small animal vet in private practice. *Id.* at 5. The junior veterinarian, Dr. Holly Colella, is an *equine* veterinarian, with specialties in general/emergency medicine, *acupuncture, and equine dentistry*—none of which obviously qualify her to care for exotic endangered wildlife. This is particularly concerning since, according to the application, Dr. Colella is taking on a greater role at Serenity Springs as Dr. Marsden “is increasingly busy with her own small animal practice.” *Id.*

Critically, none of these staff appears to have experience with conservation breeding or with caring for endangered species in a conservation breeding program.

1. **Serenity Springs lacks the breeding experience required for a CBW permit.**

As discussed in great detail in § III.A, Serenity Springs has had relatively little experience breeding tigers, and no experience breeding any other endangered species. The tigers born at the facility in 2010 were the first born there in six or seven years. No one realized the mother, Priya, who had been living in the same enclosure with the cubs’ father for five years, was pregnant until two weeks before she was due. Julie Walker, Serenity Springs’s operations director claimed: “It’s really hard to tell if they’re pregnant. Happy accident, we call it.” Jakob Rodgers, *Tiny Tigers Steal the Show in Debut at Big Cat Sanctuary*, The Gazette, Apr. 18, 2011. However, Dr. Richardson disputes this, stating that “[i]t should not be difficult for an exhibitor or dealer to tell if a tiger he holds is pregnant.” Dr. Richardson Statement 2. “Happy accident” hardly seems the right approach to breeding for a serious conservation breeding program.

1. **Serenity Springs lacks critical expertise about endangered species.**

Serenity Springs’s lack of expertise is evinced in many other ways. CBW permits are available only for “endangered wildlife” of “a species having a natural geographic distribution not including any part of the United States.” 50 C.F.R. § 17.21(g)(1).[[9]](#footnote-9) Yet, the application lists twenty-six species and additional subspecies, for which Serenity Springs is seeking a permit, many of which do not qualify, including the Canada lynx, Eastern puma, Florida panther, Ocelot, American Black bear, Grizzly bear, Gray wolf, Bobcat, Serval, African lion, and African golden cat. App. 4; *see also* *id.* at 13 (E-mail from Michael Carpenter, Senior Biologist, DMA, FWS, to Nick Sculac (May 6, 2013)) (“You have provided an extensive list of species to be included in the CBW however, the CBW is issued ONLY for breeding purposes and only for non-native (exotic) species listed under the ESA, thus a number of the species in your list are not eligible.”).

Serenity Springs’s website and newsletters frequently refer to “White Tigers,” “Snow Tigers,” and “Black Leopards” (or “Asian Black Leopards”), which suggests that these are recognized species or subspecies. *See, e.g.*, Serenity Springs Newsletter, Dec. 2012 (referring to Jamma as “a beautiful Black Leopard”); Serenity Springs Newsletter, Dec. 2011 (same and referring to Snow Magic as “our beautiful Snow Tiger”); Serenity Springs Newsletter, Feb. 2012 (stating that Bosco and Keller are “White Tigers”); Serenity Springs Newsletter, Nov. 2011 (claiming that “Snow Magic is one of only 17 Snow tigers in the world” and referring elsewhere to Keller as a “Snow Tiger”); Serenity Springs Newsletter, Nov. 2010 (identifying Sinbad as “a beautiful Asian Black Leopard”); The Leopards of Serenity Springs, http://www.serenityspringswildlife.org/leopards.php (same). They are not. *See* App. 13 (E-mail from Michael Carpenter to Nick Sculac (May 6, 2013)) (stating that “[t]here is no ‘snow tiger’ so there can’t be ‘only 17 in the world,’” as it states on the facility’s website).

In fact, both black and white coats are caused by genetic mutations, which are inherited recessively. *Science*Shot: How the White Tiger Got Its Coat, Science (sciencemag.org) May 23, 2013, http://news.sciencemag.org/; Alexsandra Scheider et al., *How the Leopard Hides Its Spots:*ASIP*Mutations and Melanism in Wild Cats*, 7 PLoS One (Dec. 12, 2012). Experts in tiger conservation state with certainty that all white tigers in this country are of mixed heritage, are highly inbred, and represent a genetic aberration—there is no population of white tigers in the wild, nor has there ever been. Philip J. Nyhus et al., *Thirteen Thousand and Counting: How Growing Captive Tiger Populations Threatens Wild Tigers*, *in* Tigers of the World: The Science, Politics and Conservation of Panthera Tigris 223, 234 (Philip J. Nyhus & Ronald Tilson eds., 2nd ed. 2010). Indeed, according to Nyhus et al., “[a white tiger’s] value to conservation is zero and they are hampering efforts to education the public about true challenges of conserving the world’s wild tigers.” *Id.* Moreover, it is because “the recessive gene for the white color is a deleterious mutation and is thus co-linked to numerous . . . often fatal characteristics” that the neonatal mortality rate is extremely high. Laren Begany & CL Cricuolo, *Accumulation of Deleterious Mutations Due to Inbreeding in Tiger Populations* (Apr. 27, 2009). Experts have noted that, among white tiger cubs who survive infancy, “most have profound birth defects, such as strabismus (cross eyes), retinal degeneration, cleft palates, scoliosis of the spine, clubbed feet, immune deficiencies, and kidney abnormalities.” Sarda Sahney, *The Myth of the Endangered White Tiger*, Science 2.0 (Aug. 30, 2007) (emphasis added); *see also* Ravi Romaiya, *Inside America’s Tiger Breeding Farms*, The Daily Beast, July 28, 2010; White Tigers: Inbreeding Depression and Genetic Abnormalities, Cat Resource Archive, *available at* http://www.messybeast.com/genetics/tigers-inbreeding.htm.

Serenity Springs also informs visitors to its website that there are “six species” of tiger and repeatedly references the various “species” of tigers. *See* Serenity Springs Newsletter, Apr. 2011. In fact, these are six subspecies of a single species, *Panthera tigris*. The International Union for Conservation of Nature (“IUCN”) Red List of Threatened Species, *Panthera tigris*, http://www.iucnredlist.org/details/15955/0.

1. **Serenity Springs lacks adequate facilities to qualify for a CBW permit.**

To say that Serenity Springs’s facilities are inadequate to meet the requirements of 50 CFR § 17.22(a)(2)(vi) would be a vast understatement. The FWS has already acknowledged as much in a direct e-mail communication to Sculac from Mike Carpenter, wherein the agency’s senior biologist states: “You have asked for species in addition to those you currently hold but, I am unable to see any space for any additional animals as it appears that all exhibits have animals I residence. We could not authorize any additional species until facilities were available. In fact, I do not see any facility for either jaguar or snow leopard in the current situation.” App. 13 (E-mail from Mike Carpenter to Nick Sculac (May 6, 2013)). More concerning, the USDA Complaint alleges that Serenity Springs “willfully violated the [AWA] Regulations” by, *inter alia*, failing to meet the minimum housing standards for tigers and other large felids on multiple occasions. USDA Compl. 2. According to the USDA, Serenity Springs has repeatedly subjected “*over fifty animals*” to conditions within enclosures that are hazardous and fall woefully short of meeting minimum standards of care, including exposed electrical wires, structurally unsound fencing, protruding nails, and shredded, splintered wood. *Id.* ¶ 26.

Noting that “the gravity of the violations . . . is great,” the USDA’s charging document against Serenity Springs also attributes the deaths of numerous animals housed there—including large felids—to the licensee’s failure to adhere to the attending veterinarian’s housing recommendations. *Id.* at 2.

In addition to Serenity Springs’s well-documented failures to meet minimum housing standards prescribed by the AWA, the application falls woefully short of meeting the facilities’ requirements imposed by 50 C.F.R. § 17.22(a)(2)(vi), insofar as it fails to give adequate descriptions of specific enclosures for each and every species for whom the applicant is seeking a CBW permit and illustrates that the existing enclosures, for which descriptions are provided, do not meet the species-specific needs of the animals.

The application states that the tiger enclosures—which house multiple tigers—are as small as 800 square feet. For comparison, the AZA’s recommendation for minimum enclosure size is 1200 square feet for *one* tiger with a fifty-percent increase in square footage for each additional tiger. AZA Tiger Species Survival Plan® (2013 -in progress). Tiger Care Manual. AZA, Silver Spring, MD. p.100. A recent inspection performed by an expert in big cat husbandry practices revealed additional serious concerns about tiger enclosures at Serenity Springs, including inadequate shelter from the elements, lack of bedding materials, lack of shade from the sun, and poor facility design that precluded tigers from being shifted securely for purposes of feeding or sanitizing the enclosures. *See* Inspection Report of Pat Craig (Mar. 5, 2012).

For these reasons, Serenity Springs lacks “the expertise, facilities [and] other resources” required “to enhance the propagation or survival of the affected wildlife,” 50 C.F.R. § 17.21(g)(3), and the FWS should deny the facility’s permit application.

1. **Serenity Springs Has Failed to Provide Material Required Information.**

The FWS must deny Serenity Springs’s application because “[t]he applicant has failed to disclose material information required.” 50 C.F.R. §13.21(b)(2) (“Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless . . . [t]he applicant has failed to disclose material information required . . . in connection with his application.”); *see also* 50 C.F.R. § 17.22 (stating that the FWS may only issue a § 10 permit “[u]pon receipt of a complete application”).

On July 26, 2013, Delcianna Winders, Director of Captive Animal Law Enforcement at the PETA Foundation, wrote to the FWS detailing material information that was missing from the application and requesting that the agency provide the information or confirm that the facility has not submitted it to the agency. Letter from Delcianna Winders to Brenda Tapia, Program Analyst/Data Administrator, Branch of Permits, DMA, FWS (July 26, 2013). The missing required material information includes:

* **“[A]ssurance that no hybrids will be bred.”** In the materials provided to PETA the FWS advised Serenity Springs that the ESA and its regulations prohibit the hybridization of listed species and that hybrids should not be bred, and requested that Serenity Springs provide an assurance that no hybrids will be bred. App. 13-14. **No such assurance from Sculac is included in the materials that have been provided to PETA.** This is especially concerning given that, as the FWS has noted, Serenity Springs’s website features a number of hybrid animals, including ligers, tigons, and generic tigers—and given that, according to the application, Serenity Springs has a history of repeatedly breeding tigers who, in all likelihood, are mixed subspecies hybrids/generic, including as recently as 2011.
* **The specific subspecies of tigers involved**.The application form requires the applicant to provide “[t]he scientific name (genus, species and, if applicable, *subspecies*) and common name of each species [it is] seeking to have covered by the registration.” App. 2 (emphasis added). The correspondence from the FWS to Sculac reiterated that “[i]n order to list tigers we would need to know the specific subspecies involved,” given that “generic tigers (animals of unknown geographical origin) are not suitable for species conservation and cannot be authorized under the CBW[.]” *Id.* at 14 (E-mail from Mike Carpenter to Nick Sculac (May 6, 2013)).
* **State authorization** for the family Lemuridae (the application appears to seek a permit for the entire family Lemuridae, but PETA has only received a copy of a state permit for *lemur catta*); clouded leopards; brown hyenas; and cheetahs.
* **Sources for species.** In its initial submission, Serenity Springs indicated its intent to acquire animals from GW Exotic, which does not hold a CBW permit, and Triple D Game Farm, which holds a CBW permit for amur and snow leopards only. *Id.* at 5. The FWS advised Serenity Springs, “You need to provide sources for other species.” *Id.* at 13 (E-mail from Mike Carpenter to Nick Sculac (May 6, 2013)). This is particularly important considering that the inventory submitted by Serenity Springs indicates that it does not currently hold a number of the species for which it seeks a CBW permit, including lemurs, brown hyenas, and cheetahs. Nor is it clear from the inventory, which identifies simply “leopards,” whether Serenity Springs already possesses all three of the leopard species for which it seeks a permit. *Id.* at 23-27. Although PETA was provided a supplemental list of entities from which Serenity Springs intends to acquire animals, *id.* at 11, it is not clear from this list whether these entities possess CBW licenses and, if so, for which species—information that is expressly required by the permit application. *See id.* at 2 (“Provide . . . [t]he name, address, and CBW registration number of the person(s) or institution(s) from whom you plan to acquire the wildlife.”).

* **Space for additional animals.** In the FWS’s May 6, 2013 correspondence with Serenity Springs, the agency advised it: “You have asked for species in addition to those you currently hold but, I am unable to see any space for any additional animals as it appears that all exhibits have animals in residence. We could not authorize any additional species until facilities were available.” *Id.* at 13 (E-mail from Mike Carpenter to Nick Sculac (May 6, 2013)). The materials provided to PETA do not include any information regarding space for additional animals, despite the fact that, as noted above, Serenity Springs seeks a permit for numerous species not currently held—with the possible exception of snow leopards.
* **A key to which species are in which enclosures.** The permit application requires “[a] detailed description, including size, construction materials, and protection from the elements, and photographs or detailed diagrams . . . clearly depicting your *existing* facilities where the wildlife will be maintained.” *Id.* (emphasis in original). As the FWS pointed out to Sculac in its correspondence, in addition to the apparent lack of space for additional animals, the diagram of the facility submitted by Serenity Springs does not indicate the species housed in fifty-two of the exhibits, making it impossible to determine “what is where.” *Id.* No key or other source indicating the species in each enclosure has been provided to PETA.
* **Genetic management.** The application form requires permit applicants to provide “[d]ocumentation showing how your captive population is being managed to maintain its genetic vitality.” *Id*. at 2. “The word ‘documentation’ means the use of documentary evidence or a furnishing with documents to substantiate a claim.” *Suarez Corp. v. U.S. Postal Serv.*, No. 87-358A, 1987 WL 955751, at \*13 (N.D. Ohio May 29, 1987) (quoting Random House Dictionary (1975)). The application provides absolutely no information—much less documentation—of how Serenity Springs is *presently* managing its captive population to maintain genetic vitality. The facility does not discuss which tigers it is breeding; how it selects breeding pairs; whether it has a master breeding plan; whether it works with any organizations to make breeding and non-breeding recommendations; how it makes acquisition and disposition decisions; how it acquires tigers for breeding; whether it tracks demographic and genetic information for the tigers in its collection; or whether it contributes to a studbook. *Compare* AZA, Species Survival Plan Program Handbook 34, 54 (Mar. 2011); Species Survival Plan Programs; AZA, Regional Collection Plan Handbook 5 (Mar. 2011). The application states merely that the facility “*plan[s]* to increase numbers of individuals within each recognized endangered species and subspecies” and “[p]reserve genetic diversity at both species and subspecies levels”; that it would like to “begin a relationship with the AZA and their Species Survival Plan”; and that it “would like to establish a DNA database for endangered species, starting with the Tiger.” App. 29-30 (emphasis added). The facility fails to explain how it “plans” to accomplish these ambitious—and expensive—goals.
* **Information regarding captive breeding.** The application form requests “a specific description of how your proposed activities are going to facilitate the captive breeding of the species . . . **including your long term goals and intended disposition of any progeny.**” *Id.* at 2 (emphasis in original). Despite the fact that Serenity Springs seeks a permit *for captive breeding*, the application materials contain virtually no information about captive breeding. In response to this request on the application, Serenity Springs directs the agency to “Attachment D.” *Id.* Attachment D, however, does not discuss *what* Serenity Springs’s proposed activities are, or *how* they will facilitate captive breeding. The only reference to captive breeding in Attachment D—which focuses largely on non-breeding activities—is a vague and cursory reference to “our specific breeding program.” *Id.* at 29. In order for PETA to meaningfully comment on—and in order for the FWS to meaningfully evaluate—a CBW-permit application, the requisite *specific* information regarding proposed captive breeding activities is imperative.
* **Detailed description of the existing facilities where the hyenas, cheetahs, and lemurs will be maintained.** As noted above, the application specifically requests this information, as do the regulations. *See*  50 C.F.R. § 17.22(a)(1)(v) (requiring that “[a] complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained” “must be attained” as part of the application for a § 10 permit); *Id.* § 17.22(a)(1)(vi) (requiring that “a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife” “must be attained” as part of the § 10 permit application). PETA has not been provided a diagram that indicates where specific species are housed and, while the application includes enclosure descriptions for a number of species, it does *not* include descriptions for hyena, lemur, or cheetah habitats, all species for which Serenity Springs seeks a permit to breed.
* **Mortality information.** The application materials attribute many mortalities to “old age,” without elaboration. App. 33-34. The application form requests that the applicant “explain the cause of the mortalities,” and the vague descriptor “old age” is not a concrete cause of death. *Id.* at 3. Nor is “possible genetic issues.” *Id.* at 34. The application form also requests that the applicant identify “measures taken to prevent future mortalities,” *id.* at 3, but in numerous instances Sculac identifies no such measures, including in the cases of “possible genetic issues” and in the cases of two tigers who were killed by cage mates, apparently due to incompatible housing arrangements, *id.* at 33-34.

Serenity Springs’s failure to provide the above material information disqualifies it from obtaining the requested CBW permit.

1. **Serenity Springs’s Proposed Activities Will Not Benefit the Species in the Wild.**

The ESA authorizes the FWS to issue permits for otherwise prohibited activities *only* “for scientific purposes or to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(a). CBW permits fall within the second of these exceptions (“enhancement”), and, as the FWS has recognized, to qualify for this exception, one must “demonstrate how your proposed activities directly relate to the survival of this species *in the wild*.” Fax from Anna Barry to John F. Cuneo, Jr., Hawthorn Corp. (Mar. 12, 2012) (emphasis added). Because Serenity Springs has not demonstrated—indeed, has not even *attempted* to demonstrate—that its activities will benefit the survival of species in the wild, its permit application must be denied.

Because Serenity Springs fails to contend that its plans will benefit the species in the wild, it is not necessary to dwell on this issue: The applicant bears the burden of demonstrating that it qualifies for the exception, *see* 50 C.F.R. § 13.21(b) (“fail[ure] to demonstrate a valid justification for the permit” warrants denial); *see also, e.g.*, Letter from Anna Barry to John F. Cuneo, Jr. (Oct. 14, 2011) (“To meet the requirements under the ESA *you need to be able to demonstrate* how your proposed activities directly relate to the survival of this species in the wild.” (emphasis added)), and here Serenity Springs has utterly failed to make any such demonstration.

Nevertheless, exploring the reasons why the activities proposed by Serenity Springs will not enhance the survival of species in the wild—and how the activities are in fact likely to operate to the *detriment* of species in the wild—underscores why this CBW permit application must be denied.

1. **The generic tigers bred by Serenity Springs do not have conservation value.**

First and foremost, as discussed extensively in § III.A.1, *supra*, and as recognized by the FWS, *see, e.g.*, FWS, Proposed Rule, U.S. Captive-Bred Inter-Subspecific Crossed or Generic Tigers, 76 Fed. Reg. 162 (Aug. 22, 2011); App. 13 (E-mail from Mike Carpenter to Nick Sculac (May 6, 2013)), the hybrid/generic tigers—*the only types of animals Serenity Springs has in fact bred*, according to its permit application—lack conservation value.

Further, as Ron Tilson explains,

The argument that privately-owned tigers have any significant conservation value falls flat when viewed from the lens of real need for four reasons. First, tiger reintroduction is not currently an available conservation tool; reintroduction has never been tried. Second, if tigers are to be reintroduced into the wild, animals of known genetic origin will be preferred. Third, the zoo and aquarium associations of North America, Europe, Australasia, and Asia, have more than sufficient tigers to meet any foreseeable need. Moreover, captive facilities in tiger range states continue to receive “problem” tigers who are removed from the wild by local wildlife authorities when they come into conflict with humans. Finally, in a rather ironic twist, if the arguments of some private owners that subspecies designation does not matter are accepted, then any perceived limitations in the holdings of the world’s zoos could be made up with translocation from one area of Asia to the other.

Statement of Dr. Tilson.

1. **Captive-bred animals are ill-suited for reintroduction**.

Moreover, even when not generic, captive-bred animals are ill-suited for reintroduction, making it unlikely in most instances that they will enhance the survival of the species.

In its simplest form, the role of captive breeding and reintroduction in conservation is analogous to Noah’s ark. Species threatened with extinction are maintained in captivity, as if aboard an ark escaping the flood, until those factors threatening their existence are removed and they can be returned to the wild.

Andrew E. Bowkett*, Recent Captive-Breeding Proposals and the Return of the Ark Concept to Global Species Conservation*, 23 Conservation Biology 773, 773 (2009); *see also* Annenberg Learner, *Why Captive Breeding?* (“When all of the existing habitat is poor quality or other environmental problems occur, a captive population can be maintained until the problems can be solved or another appropriate habitat can be found for the animal in the wild. This kind of project allows us to bank a species.”). A related purpose is to breed members of an endangered species in captivity “as a source of genetic material to infuse diversity into depleted wild populations.” IUCN, The Ethiopian Wolf: Status Survey, The Ethiopian Wolf: Status Survey and Conservation Action Plan 64 (2002) (identifying the two purposes for which “the maintenance of viable populations of rare species is important”).

The animals Serenity Springs seeks a permit to breed can never serve these purposes. First, because they maintain animals in conditions with “little or no opportunity to manage important aspects of their lives (such as quality, quantity, and timing of food and water, choice of mates or other social partners, etc.),” exhibitors like Serenity Springs fail to “provide [animals] with the kinds of experiences they will need to succeed outside of [human] care.” Kathleen N. Morgan & Chris T. Tromborg, *Sources of Stress in Captivity*, 102 Animal Behaviour Science 262, 287 (2007) (internal citation omitted); *see also* M. Elsbeth McPhee*, Generations in Captivity Increases Behavioral Variance: Considerations for Captive Breeding and Reintroduction Programs*, 115 Biological Conservation 71, 71 (2003); Jennifer L. Kelley et al., *The Influence of Rearing Experience on the Behaviour of an Endangered Mexican Fish, Skiffa Multipunctata*, 122 Biological Conservation 223, 223 (2005); Javier Alvarez (FWS), Commercial Captive Propagation and Wildlife Conservation, IUCN SSC Commercial Captive Propagation and Wild Species Conservation, Selected Background Papers, Dec. 7-9, 2001; Noel F.R. Snyder et al., *Limitations of Captive Breeding in Endangered Species Recovery*, 10 Conservation Biology 338, 340 (1996).

Second, the chasm between the conditions in captivity and the conditions in nature threaten genetic fitness and the preservation of the species-specific traits necessary for most animals to survive in the wild. “Evolutionary processes do not stop because species are in cages,” and over time the erosion of species-specific traits can become inscribed in the genetic code of the animal. Noel F.R. Snyder et al., *Limitations of Captive Breeding in Endangered Species Recovery*, 10 Conservation Biology 338, 341 (1996).

Moreover, the traits selected for in captivity are unlikely to be those necessary for success in the wild. For example, “captive breeding often results in the inadvertent selection of traits that are favourable in captivity, such as tameness and resistance to stress, or [in] the relaxation of selective forces that are common in nature, such as predation.” Jennifer L. Kelley et al., *The Influence of Rearing Experience on the Behaviour of an Endangered Mexican Fish*, 122 Biological Conservation 223, 223 (2005); *see* Noel F.R. Snyder et al., *Limitations of Captive Breeding in Endangered Species Recovery*, 10 Conservation Biology 338, 341 (1996); Richard Frankham, *Genetic Adaptation to Captivity in Species Conservation Programs*, 17 Molecular Ecology 325, 326 (2008).

Given the predictability and invariability of the captive environment, as well as its physical limitations, it is unsurprising that “[c]haracteristics selected for under captive conditions are overwhelmingly disadvantageous in the natural environment.” Richard Frankham, *Genetic Adaptation to Captivity in Species Conservation Programs*, 17 Molecular Ecology 325, 326 (2008); *accord* Jennifer L. Kelley et al., *The Influence of Rearing Experience on the Behaviour of an Endangered Mexican Fish*, 122 Biological Conservation 223, 223 (2005).

Simply stated, the tigers bred at Serenity Springs—and other potential species—cannot be used to augment wild populations, or as a source of genetic material, since they are woefully unrepresentative of their wild counterparts. *See, e.g.*, Richard A. Griffiths & Lissette Pavajeau, *Captive Breeding, Reintroduction, and the Conservation of Amphibians*, 22 Conservation Biology 852, 853 (2008).

1. **Captive breeding fails to address the primary threat to the species in the wild: lack of adequate habitat and human-animal conflict.**

Even if reintroduction were a goal of Serenity Springs—which it is not—adequate habitat for tigers and the other species Serenity Springs seeks permission to breed has declined precipitously and no longer exists in sufficient quantity to support such a goal. As Jack Woody, who oversaw the endangered species program at the FWS for over twenty years, summarized: “It’s useless to produce truckloads of [animals] if there’s nowhere to release them.” Laura Tangley, *Captive Propagation: Will It Succeed?*, 121 Science News 266, 268 (1982) (quoting Jack Woody). Captive breeding by Serenity Springs does nothing to reverse this trend, and thus cannot be used as a basis to approve its CBW permit application.

1. **Serenity Springs’s proposed activities are actually likely to operate to the *detriment* of endangered species in the wild.**
2. **The FWS must make an *individualized* determination as to whether Serenity Springs’s proposed activities are likely to adversely affect the survival of endangered species.**

The ESA “requires *case-by-case* review of exceptions,” which includes “mak[ing] certain findings,” *Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 119 (D.D.C. 2009), appeal dismissed, 09-5292, 2010 WL 286806 (D.C. Cir. Jan. 4, 2010) (emphasis added), including that “if granted and exercised [the exception] *will not operate to the disadvantage of such endangered species*,” 16 U.S.C. § 1539(d)(2) (emphasis added). The regulations further require the FWS to make an individualized determination that “the authorization requested” does not “potentially threaten[] a wildlife or plant population,” 50 C.F.R. . 13.21(b)(4), as well as to consider “[t]he probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit,” id. § 17.22(a)(2)(ii). Thus, the law mandates that the FWS make an “individualized analysis” of each permit application: including specific findings about specific animals in specific contexts. *See Friends of Animals*, 626 F. Supp. 2d at 119-20 (“[T]he text, context, purpose and history of section 10 show a clear Congressional intention that permits must be considered on a case-by-case basis . . . .”).

Accordingly, in considering Serenity Springs’s application, the FWS may not rely on its blanket determination that the taking, transport, shipping, and sale of captive-bred wildlife “may affect, but is not likely to adversely affect the survival of the species.” Memorandum from the Chief, Branch of Consultation and Monitoring, Division of Scientific Authority, FWS, to the Chief, Division of Management Authority, FWS (Nov. 17, 2003). Nor may the agency rely on its earlier, substantially similar blanket determination that there is “no adverse affect,” Memorandum from the Chief, Office of Endangered Species, FWS, to the Chief, Wildlife Permit Office, FWS (Aug. 26, 1981)).

1. **Serenity Springs’s exhibition of animals—and sale of animals for use in entertainment—is particularly detrimental to the species.**

By breeding and exhibiting captive wildlife, Serenity Springs is not contributing to survival of the species. By exhibiting captive-bred animals for purposes of “entertain[ing] the public,” App. 30, providing tigers for the entertainment industry, *id.* at 34, and through its role in “exotic pet dealing and ownership,” *id.* at 33, Serenity Springs is doing more harm than good to the species.

As discussed previously, Serenity Springs’s exhibition of endangered animals is detrimental to the species because of the serous misimpression it gives the public about the status of the species. *See* § III.B. As Nyhus et al. explain:

[Z]oos may actually undermine the continued existence of what they purport to celebrate.

People watch the films, they visit the zoos, and by the mesmeric power of these vicarious

experiences, they come carelessly to believe that the Bengal tiger . . . is alive and well

because they have seen it.

Philip J. Nyhus et al., *Thirteen Thousand and Counting: How the Growing Captive Tiger Populations Threaten Wild Tigers*, *in* Tigers of the World,2ded., pp. 237 (2010); *see also id.* at 232 (our exposure to tigers as sources of entertainment has led to “the blurring of our awareness of what tigers are and the serious threats wild tigers face to their continued survival”).

This is especially true with regard to the animals bred by Serenity Springs—such as white tigers—that do not even exist in the wild. Experts agree that people who spend money to see white tigers on exhibit are “actually less—not more—likely to have a meaningful understanding of the real challenges of wild tiger conservation.” *Id.* at 237-38. Nyhus et al. explain, “One logical outcome of the popularity of white tigers is a warped perspective and awareness of what a tiger is and the true threats faced by wild tigers.” *Id.* at 234-35.

1. **Resources spent by Serenity Springs on captive breeding are better spent on legitimate conservation programs.**

Serenity Springs’s captive breeding is also detrimental to the species because it diverts scarce resources from conservation efforts that could have a truly beneficial impact on endangered animals in the wild. Snyder et al. state that they “have frequently dealt with funding competition between [“in situ efforts” and “captive breeding”] and are acutely aware of how one approach often preempts the other, sometimes to the detriment of crucial in situ needs.” Noel F.R. Snyder et al., *Limitations of Captive Breeding in Endangered Species Recovery*, 10 Conservation Biology 338, 344 (1996); *see also* Andrew E. Bowkett, *Recent Captive-Breeding Proposals and the Return of the Ark Concept to Global Species Conservation*, 23 Conservation Biology 773, 774 (2009) (reviewing the literature); IUCN, The Ethiopian Wolf: Status Survey and Conservation Action Plan 65 (2002). This is an especially critical problem given that the cost of captive breeding often exceeds in situ costs “even with intensive protection.” Andrew E. Bowkett, *Recent Captive-Breeding Proposals and the Return of the Ark Concept to Global Species Conservation*, 23 Conservation Biology 773, 774 (2009) (citing A. Balmford et al., *Parks or Arks: Where to Conserve Large Threatened Mammals?*, 4 Biodiversity & Conservation 636 (1995)).

Captive breeding can also be a political, as well as monetary, diversion. Snyder et al. explain that “[l]ong-term solutions are often politically more difficult than captive breeding solutions, so it is tempting for managers to deemphasize efforts for wild populations once captive populations are in place.” Noel F.R. Snyder et al., *Limitations of Captive Breeding in Endangered Species Recovery*, 10 Conservation Biology 338, 344 (1996).

Clearly, Serenity Springs’s captive breeding does not provide, and will never provide, a benefit to endangered animals in the wild, and thus its application for a CBW permit must be denied.

1. **Issuance of a Blanket Five-Year Permit Would Violate the ESA.**

According to the Federal Register notice of Serenity Springs’s CBW permit application, if granted the permit would “cover[] activities to be conducted by the applicant over a five-year period.” Receipt of Applications for Permit, 78 Fed. Reg. 38731, 38732 (June 27, 2013). Issuing Serenity Springs a five-year blanket permit to engage in activities that would otherwise require individual permits, and without public notice and an opportunity for comment, *see* 16 U.S.C. 1539(c), would contravene the letter and the spirit of the ESA, which requires that permits be *specific* and narrowly tailored. Congress intended for the ESA to prohibit “[v]irtually all dealings with endangered species, including taking, . . . except in *extremely narrow* circumstances.” *Tenn. Valley Auth.*, 437 U.S. at 180 (emphasis added). Accordingly, the ESA grants the FWS limited authority to authorize “any *act* otherwise prohibited by section 1538 of this title . . . to enhance the propagation or survival of the affected species.” 16 U.S.C. § 1539(a)(1)(a) (emphasis added). The plain language of § 1539(a)(1)(a) (“any act”) contemplates a *single*, *identifiable* performance of taking, delivering, receiving, carrying, transporting, or shipping—not any vague, unspecified series of activities involving captive-bred wildlife performed over several years. *See also* 50 C.F.R. § 13.42 (providing that ESA permits are “specific” and should “describe certain *circumscribed* transactions,” setting forth “*specific* times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out.” (emphases added)). To broadly authorize Serenity Springs to engage in innumerable unspecified and otherwise prohibited activities with unspecified animals would directly contravene this language and would allow the exception to swallow the rule.

Issuing such a broad permit would also directly contravene the public’s right to information under § 10(c) of the ESA. Section 10(c) mandates:

The Secretary *shall* publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice *shall* invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver *shall* be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. *Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.*

16 U.S.C. § 1539(c) (emphases added); *see Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 113 (D.D.C. 2009); *Cary v. Hall,* No. C05-4363 VRW, 2006 WL 6198320, at \*11 (N.D. Cal. Sept. 30, 2006). Bypassing the act-by-act assessment mandated by the ESA in favor of blanket permission to engage in any and all captive-breeding-related activities over a five-year span deprives the public, including PETA, of information to which it would be entitled “as a matter of public record at every stage of the proceeding,” 16 U.S.C. § 1539(c), but for the FWS’s issuance of the blanket permit.

1. **Should the FWS Nevertheless Issue Serenity Springs a CBW Permit, It Must Be Limited to One Year Given the Pending Enforcement Action for AWA Violations.**

If, despite the abundant reasons in favor of denying Serenity Springs’s CBW permit application set forth here and supported by the accompanying exhibits, the FWS decides to grant Serenity Springs a CBW permit, such permit should be limited to a term of one year, given that Serenity Springs has an enforcement action currently pending with the USDA. *See* Letter from Anna Barry to Ferdinand Hantig (Aug. 20, 2012); USDA Compl.; E-mail from David Sacks, USDA, to Teresa Marshall, PETA Foundation.

1. **Conclusion**

For all of the reasons detailed above, PETA urges the FWS to deny Serenity Springs’s application for a CBW permit and urges the FWS to launch an investigation into Serenity Springs’s apparent violations of the ESA and CWSA, as well as its submission of false material information to the agency as part of its application.

Pursuant to 50 C.F.R. § 17.22(e)(2), should the agency decide to issue the permit despite our objections, we hereby request notice of that decision at least ten days prior to the issuance of the permit via e-mail to DelciannaW@petaf.org or telephone to 202-309-4697.

1. *See id.* (“Captivitymeans that living wildlife is held in a controlled environment that is intensively manipulated by man for the purpose of producing wildlife of the selected species, and that has boundaries designed to prevent animal, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food.”). [↑](#footnote-ref-1)
2. Although 50 C.F.R. § 13.42 is a general permitting regulation, this provision applies with equal force to CBW permits. *See id.* § 13.3 (“The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including . . . “Endangered and Threatened Wildlife and Plants” (Part 17) . . . . As used in this part 13, the term ‘permit’ will refer to a license, permit, certificate, letter of authorization, or other document as the context may require . . . .”). [↑](#footnote-ref-2)
3. Tellingly, Serenity Springs also includes a link to GW Exotic Animal Park on its website, listing it as an “organization[] that support[s]” Serenity Springs, *see* Serenity Springs, Links, http://www.serenityspringswildlife.org/links.php—one of only three links. [↑](#footnote-ref-3)
4. The permit number that Serenity Springs listed on its application as a CBW permit number for GW Exotic was in fact the number of an *expired export* permit. [↑](#footnote-ref-4)
5. It is also unclear whether Serenity Springs already possesses the three species of leopards that it seeks a permit to breed, as it describes only “leopards” without specification on the inventory submitted as part of its application. *See* App. 23. [↑](#footnote-ref-5)
6. On February 1, 2012, the USDA filed suit against Serenity Springs, alleging willful violations of the AWA, the regulations, and the implementing standards and seeking revocation or suspension of the facility’s license. USDA Compl. Noting that no fewer than thirty-one animals died in the facility’s care between May 2007 and January 2010, the agency asserts that “the gravity of the violations here is great, and include the repeated noncompliance with the regulations and failure to meet the minimum standards for veterinary care, housing, and husbandry.” *Id.* at 2. [↑](#footnote-ref-6)
7. Additionally, it appears that the transfer of a big cat from Robin Sherman of Ballentine, MT to Sculac (*see* App. 25) may similarly have violated the CWSA since we are unable to locate a record of any federal licensure for Sherman. [↑](#footnote-ref-7)
8. *See id.* (“Captivitymeans that living wildlife is held in a controlled environment that is intensively manipulated by man for the purpose of producing wildlife of the selected species, and that has boundaries designed to prevent animal, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food.”). [↑](#footnote-ref-8)
9. The only exception to this requirement is the Laysan duck. *Id.* § 17.21(g)(5)(iii). [↑](#footnote-ref-9)