

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between the United States of America, the Commonwealth of Puerto Rico on behalf of the Puerto Rico Department of Justice (“PR DOJ”), and the Commonwealth of Puerto Rico on behalf of the Puerto Rico Department of Environment and Natural Resources (hereinafter referred to as “DENR”) (collectively, “the Parties”).

WHEREAS, the United States and the PR DOJ allege as follows:

1. The Puerto Rico Zoo (also known as the “Mayaguez Zoo” and the “Dr. Juan A. Rivero Zoo”) (hereinafter “the Zoo”) is in the City of Mayaguez in the District of Puerto Rico, and has been operated and managed by DENR since approximately 2018.
2. Historically, the Zoo was operated and managed by the Puerto Rico National Park Company and then the Puerto Rico Department of Sports and Recreation.
3. The holding facility known as the Centro de Detención en Cambalache in Arecibo, Puerto Rico (hereinafter “Cambalache”) is also owned and operated by DENR.
4. The Zoo houses approximately 300 individual animals, and Cambalache houses approximately 100 individual animals.
5. The Zoo houses mammals, reptiles, amphibians, and birds, many of which are protected by federal law and local law, including but not limited to the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (hereinafter “ESA”); the Animal Welfare Act, 7 U.S.C. §§ 2156 *et seq.* (hereinafter “AWA”); the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq.* (hereinafter “BGEPA”); the Migratory Bird Treaty Act, 7 U.S.C. § 703 *et seq.*, and the Ley para el Bienestar y la Protección de los Animales, 5 L.P.R.A. §§ 1660-1684 (hereinafter “LPRA”).
6. The Cambalache houses mammals, reptiles, and birds, many of which are

protected by federal law and local law, including but not limited to the ESA, the MBTA, and the LPRA.

7. The United States Department of Agriculture (hereinafter “USDA”) had issued a license under the AWA for the exhibition of certain animals at the Zoo, which was terminated at the Zoo’s request on January 7, 2018.

8. Since at least 2012, USDA has documented AWA violations at the Zoo, including:

- In June 2014, USDA’s Animal and Plant Health Inspection Service (“APHIS”) reported that “[a] puma, coatimundi, & a baboon were euthanized because they were not ‘fit for exhibition.’ The medical records did not list any recent illnesses or work-ups, & the documentation doesn’t indicate any problems that would lead to the decision for euthanasia.... [They] were euthanized on January 30, 2014 utilizing a bottle of euthanasia which had expired on October 2013.... A purchase order was submitted by the attending veterinarian several months ago, but due to the zoo’s purchasing administrative procurement process they have yet to be ordered.”
- In June 2014, APHIS noted that “[r]egulated species (deer) that have been on exhibition have been euthanized by cutting their jugular veins with a knife and then fed to the big cats. Cutting an animal’s throat with a knife without first stunning them is not considered humane and is not an accepted method of euthanasia. Guinea pigs that were also on exhibit were fed alive to snakes as food.”
- In May 2015, a lion was observed with untreated wounds on its face that flies had settled on.
- In October 2016, APHIS observed: “The rhino had what appears to be an oval mass approx. 1.5 inches under the skin fold of the right front elbow. Fifty percent of this mass was slightly pink in color. The attending veterinarian and caretaker was unaware of this growth.”
- In February 2017, APHIS observed numerous expired medications. In addition, “[t]he refrigerator that is used to store medications had dirt, frozen and liquid condensate.” APHIS observed that “[t]he cougar was observed to be pacing and panting. These behaviors were observed while directly observing the animal and after we moved to inspect other nearby enclosures. This cougar is being housed in a small enclosure which only offers minimal amount of space to make species appropriate behaviors. This cougar appears to be exhibiting distress or an underlying veterinary care condition.... One of the tigers is thin. This tiger currently is under observation but has not received any laboratory or other tests/examinations since 2015.”

- In June 2017, APHIS noted long-existing problems with infestations of cockroaches and rats; the pest-control company had “discontinue[ed] services because they have not been paid.” “Flies were observed throughout the zoo in sufficient numbers that they were causing discomfort, red areas, and changes/scarring to the [borders] of the ears of the lions.”
- In August 2017, “[n]ew born tiger cubs were moved by the caretakers without notifying the attending veterinarian which resulted in the possible rejection of the cubs by the mother and eventual death of the cubs.”

9. In 2017 and 2018, the Puerto Rico Governor’s Executive Committee on the Puerto Rico Zoo (“Executive Committee”) conducted multiple visits to the Zoo, interviewed the director and veterinarian, reviewed several reports submitted by the Zoo, and reported numerous concerns regarding the Zoo, including:

- 127 mammals required physical exams, vaccines and/or birth control, of which 30 required urgent medical attention.
- A kangaroo had episodes of anorexia and lethargy, which were suspected to be the result of poisoning from the wood of her enclosure.
- One of the pumas was limping for several months, and no x-ray was possible because of a lack of anesthetic medication. The puma died in August 2017.
- The rhinoceros was improperly nourished with horse meat and was limping because of the uneven terrain of its enclosure.
- The elephant was presenting symptoms of arthritis, which may have been the result of the uneven terrain of its enclosed area, which was filled with holes.

10. Following its March 2018 report, the Executive Committee recommended the transfer of the Zoo’s animals (and particularly the elephant and felines) to sanctuaries in the United States.

11. Around 2019, deaths at the Zoo included more than eleven animals, including a

Bengal tiger and a zebra; around 2020, deaths at the Zoo included more than twelve animals, including two lions, a lemur, and a jaguar; and around 2022 and early 2023, deaths at the zoo included a chimpanzee, a black bear, a baboon, a bald eagle, owls, an emu, and several antelopes and deer.

12. Since at least 2021, the Zoo has not had formal arrangements with an attending veterinarian or the ability to provide basic, routine, or emergency veterinary care for the animals in its possession.

13. Since September 2022, large portions of the Zoo have been without power and have only had intermittent water supply.

14. On several occasions since the Zoo voluntarily terminated its AWA exhibitor license, the Zoo has exhibited animals to members of the public, including the media, in violation of the AWA, 7 U.S.C. § 2134, 9 C.F.R. § 2.1.

15. The Zoo does not currently meet the AWA's minimum requirements for the humane handling, care, and treatment of the animals at the Zoo, *see* 7 U.S.C. § 2143(a)(2).

16. The U.S. Fish and Wildlife Service (hereinafter "USFWS") issued permits to the Zoo pursuant to the BGEPA authorizing the possession of Bald and Golden Eagles at the Zoo (hereinafter "the Eagle permits"), which expired on March 21, 2019.

17. The Eagle permits required the Zoo to obtain USFWS permission to dispose of any eagles and to send any Bald or Golden Eagle carcasses to the National Eagle Repository.

18. The Zoo failed to obtain USFWS permission to dispose of two Bald Eagles that have died since March 21, 2019, and did not send the carcasses to the National Eagle Repository.

19. The Zoo continued to possess Bald and Golden Eagles until the eagles were removed by USFWS on March 3, 2023.

20. The Zoo possesses ESA-protected animals, including a chimpanzee, an African elephant, a white rhinoceros, a Moluccan cockatoo, a White cockatoo, Andean condors, African lions, Ring-tailed lemurs, Spectacled caiman, and a Puerto Rico parrot.

21. The Zoo has harmed and harassed and thereby taken ESA-protected animals in violation of ESA Section 9 by failing to provide adequate veterinary care, adequate shelter and/or adequate enrichment to meet the psychological needs of the species, thereby significantly disrupting the animals' normal behavioral patterns.

22. The Zoo possesses or until recently possessed MBTA-protected animals, including Bald and Golden eagles, a barn owl, Great Horned owls, a Puerto Rican screech owl, a burrowing owl, a Sandhill crane, turkey vultures, black-necked stilts, a brown thrush, a red-legged thrush, common geese, Red-tailed hawks, and a scaly-naped pigeon.

23. On January 24, 2023, the PR DOJ issued a report in which it concluded that the Zoo "is in gross non-compliance with" the LPRR. After several visits to the Zoo, interviews of people connected to the Zoo, including veterinarians, and review of numerous documents, the PR DOJ found among other things that the animals were receiving inadequate veterinary care. There was no full-time veterinarian, no functioning refrigerator for preserving medications, the clinic lacked equipment for treating large animals, and the veterinarians were paying for medications out of pocket, and there was inadequate communication between the veterinarian and the zookeepers. The report also noted that as of January 2023, there were only six employees responsible for more than 300 animals and they lacked sufficient training. In addition, the PR DOJ found that the plant for treating water at the Zoo had been out of service since 2017. During a January 2023 visit, numerous animal enclosures were observed to be broken, rat excrement was seen throughout the Zoo as a result of an alleged lack of funds to pay for pest-control services,

the enclosures housing the ESA-protected white rhinoceros and elephant were dirty, and trash had been collecting for three weeks.

24. Cambalache possesses numerous animals, including primates, that lack regular veterinary care and a written management protocol.

THE PARTIES AGREE AND STIPULATE AS FOLLOWS:

1. The Parties recognize that this Agreement has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Agreement is fair, reasonable, and in the public interest.

2. DENR is the sole owner of the animals currently held at the Zoo and Cambalache. DENR is not aware of any other individual or entity that has any rights or interests in the animals currently held at the Zoo or Cambalache. The animals at the Zoo and Cambalache were inventoried on February 26, 2023, and February 27, 2023, respectively, and the inventories, attached to this Agreement, are incorporated by reference.

3. DENR agrees to transfer ownership and physical custody of all animals currently held at the Zoo and Cambalache and any offspring born to those animals after this Agreement is signed to other facilities designated and approved by the United States that are equipped and prepared to humanely and appropriately house and care for these animals (the "Transfer"). This process will be coordinated by the United States or a third party designated and approved by the United States to begin as soon as possible and to be completed within six (6) months of execution of this Agreement. The six-month period for completing the Transfer may be extended if necessary for the safe, humane, and appropriate transfer of an animal or animals.

4. At least seven (7) days in advance of any scheduled Transfer pursuant to this Agreement, DENR and/or the appropriate officials with sufficient authority to bind DENR will

execute an abandonment acknowledgement provided by the United States, immediately abandoning its right, title, and interest in the animals scheduled for transfer. The abandonment form will state the following:

DENR confirms that it legally owns the animals (“Animals”) identified on this form and that no other person or entity has any rights or interests in the Animals. DENR agrees to immediately abandon its right, title, and interest in the Animals identified in the attached document and any offspring of those animals. By this signature, DENR hereby relinquishes all claims of ownership of the Animals and abandon title to the Animals. DENR understands that title to the Animals may vest in anyone, and DENR has no authority to direct or control to whom title vests and have no intention of resuming or reasserting title to the Animals. DENR agrees to surrender the Animals to appropriate entities, whether the United States or third parties approved by the United States. DENR agrees that DENR will provide the Animals adequate care, including food, water, shelter, and veterinary care, until the animals are permanently removed from the Zoo and Cambalache facilities. Once the Animals have been transferred from the Zoo and Cambalache to the designated entities and those entities have taken possession of the Animals, the United States agrees that DENR is no longer legally responsible for providing any care to those Animals. This abandonment acknowledgement is lawful, and DENR will not bring any future legal challenges, either in a personal capacity or as part of a business entity, against the United States or any facility involved in the removal, transport, or care of these Animals.

5. DENR agrees to facilitate the Transfers as set forth herein by providing reasonable access to the Zoo and Cambalache facilities by the United States and its designees as soon as February 26, 2023. Reasonable access includes but is not limited to ensuring that Zoo and Cambalache employees and agents cooperate with the United States and its designees during the Transfers, providing veterinary records, allowing entry to and use of the Zoo and Cambalache facilities for the purposes of assessing the condition of the animals and preparing the animals for transfer, and allowing access to employees and veterinarians at the Zoo and Cambalache. The United States or its designee shall give DENR 48-hours’ notice of a request for reasonable access to the Zoo or Cambalache. The United States reserves the right to include in the Transfer team federal agents to ensure safety for all individuals involved in the Transfers.

6. If animals arrive at Cambalache after the execution of this Agreement, DENR

agrees to notify the United States within three (3) business days of the additional animal(s) and use best efforts to promptly facilitate the transfer of such animals.

7. DENR will continue to staff the Zoo and Cambalache with zookeepers and/or animal caretakers and will use best efforts to provide adequate care, including veterinary care, to the animals until they are permanently transferred from the facilities. DENR agrees to alert the United States if an animal is having a serious medical issue within 24 hours of the medical issue coming to DENR's attention. DENR also agrees that during the term of implementation of this Agreement, DENR will obtain the written approval of the United States before any animal held at the Zoo or Cambalache is euthanized due to injury or illness. If an emergency necessitates the euthanasia of a Zoo or Cambalache animal and the DENR cannot obtain timely approval, DENR agrees to immediately: (1) notify the United States and provide records and information which substantiate the need to euthanize the animal, (2) perform a necropsy, and (3) provide necropsy reports of the animal to the United States.

8. DENR shall notify the United States within three (3) business days of the birth of any animals at the Zoo or Cambalache.

9. DENR shall retain all records associated with complying with this Agreement for at least 1 year from the date of this Agreement.

10. DENR agrees that, after the Transfer as set forth above is complete, it will fully comply with the relevant provisions of the ESA, AWA, BGEPA, MBTA, and LPRA pertaining to any existing or future facility that it shall manage or maintain for the purpose of keeping or exhibiting any animals.

11. Within eight (8) months of the signing of this Agreement, DENR agrees to submit an Alternate Project Request to the Federal Emergency Management Agency ("FEMA") to

request that funds allocated for the rehabilitation of the Zoo be reallocated to reimburse the costs of permanently relocating the animals to sanctuaries pursuant to implementation of this Agreement. Such costs will be documented by the relocating parties to the Zoo through submission of invoices to the United States Attorney's Office for the District of Puerto Rico. If and when the reallocated funds become available to DENR, DENR will ensure that the funds are transferred to the relocating parties within one month. This Agreement does not restrict the use of any surplus FEMA funds allocated to the Zoo that may remain after any reimbursements under this Agreement.

12. The Parties agree to confer in good faith to resolve any disputes that arise out of or relating to this Agreement. The Parties may agree in writing to modify any term of this Agreement. Any such written modification must be executed by all Parties. Should the United States determine that DENR has failed to comply with any or all of the terms and conditions of this Agreement, it agrees to provide written notice to the DENR within ten (10) days of such purported breach and a reasonable opportunity to respond.

13. If the Parties are unable to resolve any dispute arising out of or relating to this Agreement, the United States may file an action challenging DENR's conduct with respect to the Zoo and Cambalache. The Parties do not waive or limit any defense relating to such litigation.

14. Should the United States determine that DENR has failed to comply with any or all of the aforementioned terms and conditions, the United States expressly reserves the right (1) to seek any relief it deems appropriate for DENR's violation of this Agreement, including filing a suit in the United States District Court for the District of Puerto Rico to enforce the terms of this Agreement or (2) declare this Agreement null and void and without any legal effect.

15. This Agreement in no way limits or affects any right of entry and inspection, or

any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or licenses, nor does it limit or affect any duty or obligation of DENR to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, permits, or court orders.

16. This Agreement forever resolves the civil claims of the United States against DENR, its officers, employees, and contractors in their official and personal capacities for violations of the AWA, ESA, MBTA, BGEPA, and their implementing regulations related to conduct at the Zoo and Cambalache facilities through the date the Transfer is complete, provided that the measures described in this Agreement are fully satisfied.

17. The United States and the PR DOJ forever agree that they will not prosecute any criminal action against DENR and its officers, employees, and contractors (except for criminal tax violations, if any, as to which the United States cannot and does not make any agreement) for violations of the AWA, ESA, MBTA, BGEPA, or LPPRA resulting from DENR's operation of the Zoo and Cambalache through the date the Transfer is complete, provided that the measures described in this Agreement are fully satisfied.

18. The United States reserves all legal and equitable remedies to address any violations at the Zoo and Cambalache other than violations of the AWA, ESA, MBTA, or BGEPA through the date the Transfer is complete.

19. DENR releases and forever discharges the United States, including but not limited to the U.S. Department of Justice, USDA, USFWS, and any other federal, state or local law enforcement agency, and their agents, contractors, and employees, as well the PR DOJ, acting in their individual or official capacities, from any and all claims, rights or causes of action, damages, expenses and costs, known or unknown, which DENR have or may have against these

government agencies and/or their employees, agents, and contractors arising from, related to, or as a result of, any actions with respect to the Zoo or Cambalache or related to the subject matter of this Agreement through the date the Transfer is complete.

20. The Parties agree that neither the execution of this Agreement, nor compliance with its terms, shall constitute an admission of any fault or liability on the part of any of the Parties. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the potential claims settled in this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, none of the Parties waives or relinquishes any legal rights, claims or defenses it may have.

21. This Agreement is not a license, or a modification of any license, under any federal, State, or local laws or regulations. DENR and its officers and employees are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and licenses; and DENR's compliance with this Agreement shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by executing this Agreement, warrant or aver in any manner that DENR's compliance with any aspect of this Agreement will result in compliance with the AWA, ESA, MBTA, BGEPA, or with any other provisions of federal, State, or local laws, regulations, or licenses.

22. This Agreement does not limit or affect the rights of the United States against any third parties not party to this Agreement, nor does it limit the rights of third parties not party to this Agreement against DENR, except as otherwise provided by law.

23. The obligations of this Agreement apply to and are binding upon the United States, the PR DOJ, and DENR and any successors, assigns, or other entities or persons otherwise bound by law.

24. No transfer of ownership or operation of the Zoo or Cambalache shall relieve DENR of its obligation to ensure that the terms of this Agreement are implemented.

25. DENR shall provide a copy of this Agreement to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Agreement. DENR shall not raise as a defense in any lawsuit brought because of a failure to comply with this Agreement DENR's failure to provide a copy of this Agreement to any officer, employee, or agent or the failure by any of its officers, employees, or agents to take any actions necessary to comply with the provisions of this Agreement.

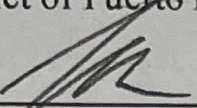
26. The Parties shall bear their own costs of this action, including attorneys' fees.

27. This Agreement shall take effect only when the Agreement has been signed by all Parties and shall terminate one year from the date the Transfer is complete.

28. This Agreement constitutes the entire agreement among the Parties regarding the subject matter of the Agreement and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the subject matter of the Agreement.

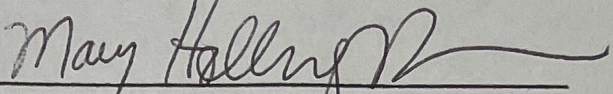
29. The undersigned representatives certify that they are fully authorized by the Party they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

W. STEPHEN MULDROW
United States Attorney
District of Puerto Rico



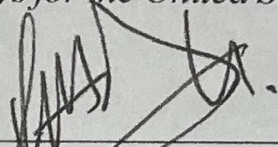
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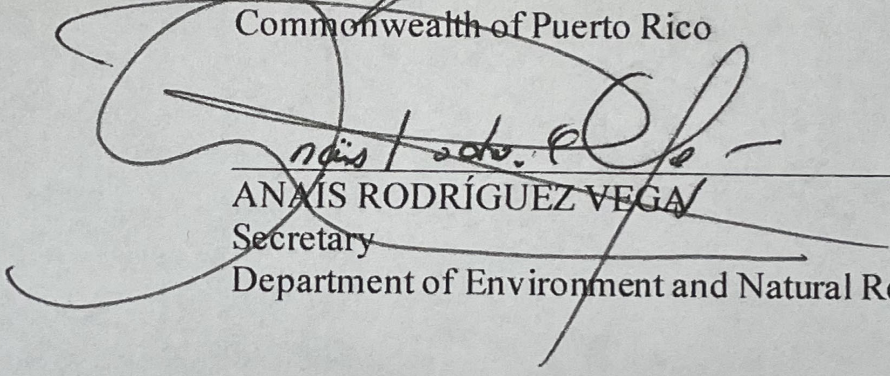


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