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November 8, 2024

*(Submitted via Department of Interior FOIA Portal)*

**Re: Freedom of Information Act Request for Records Related to the Management of Wild Horses in the Theodore Roosevelt National Park**

On behalf of our client, Chasing Horses Wild Horse Advocates (“CHWHA”), we are writing pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to formally request that the U.S. National Park Service (“NPS”) provide certain responsive records in its possession or control pertaining to the recent roundups of wild horses on the Theodore Roosevelt National Park (“TRNP”) as specified in further detail below. CHWHA is a 501(c)(3) non-profit organization that works to protect wild horses that inhabit the TRNP, ensuring that future generations have the ability to appreciate these unique animals. CHWHA is committed to preserving the genetic integrity of those wild horses that have inhabited the area in and around the TRNP since before its establishment, which the organization achieves through education, advocacy, and public outreach.

**REQUESTED RECORDS**

CHWHA requests from NPS—which should be construed for search purposes to include but not be limited to the TRNP offices, NPS’s Midwest Regional Offices, and any staff members of those offices or any other NPS offices that might possess records responsive to this request—electronic copies of the following records in NPS’s possession or control as of the date that NPS commences its search in response to this FOIA request:

- (1) Records prepared according to the National Environmental Policy Act (“NEPA”) assessing the environmental impacts of the wild horse gathers conducted October 13-17, 2024 (“2024 Roundups”);
- (2) Records prepared since April 2024 concerning the formulation of a new management plan for wild horses in the TRNP (i.e., any management plan meant to replace the agency’s 1978 Environmental Assessment for Proposed Feral Horse Reduction (“1978 EA”));
- (3) Records prepared since April 2024 concerning new and/or supplemental NEPA analyses of the environmental impact of administering GonaCon to wild horses in the TRNP;

- (4) Records correlating the names of individual horses with the identifying numbers listed in the “Horse Management Data” published by the TRNP on October 25, 2024;
- (5) Records prepared since 2009 that reveal the date(s) on which each mare received a dose of GonaCon, and the dosage administered.

As used throughout this request, the terms “record” or “records” shall mean any and all forms of records and documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored) in NPS’s possession or control that were generated, received, obtained, held, or created by or for the agency by any entity, agent, partner, or representative within or outside the federal government, including any employees, agents, or counsel.

Because FOIA provides that if portions of a document are exempt from release, the remainder must nevertheless be segregated and disclosed, 5 U.S.C. § 552(b), we request that you provide us with all non-exempt portions of the requested records, along with an explanation of which documents, if any, may be privileged or exempt from disclosure, including the basis for any exemption applied.

#### FEE WAIVER REQUEST

CHWHA requests that NPS waive all fees in connection with this request, as required by 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.45. FOIA provides that agencies “shall” provide records “without any charge” or at a reduced rate where “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.48 (enumerating criteria for determining whether “fee waiver request meets the requirements of § 2.45”). The relevant statutory and regulatory criteria are easily satisfied here.

##### *I. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations and/or Activities*

As an initial matter, the records requested here all concern NPS’s management of wild horses on federal property—specifically the TRNP. CHWHA is requesting these records to shed light on whether and/or how NPS is discharging its resource management duties under its own implementing regulations and other relevant statutes such as NEPA. Hence, the records sought here plainly “concern the operations or activities of the Federal government” because CHWHA is seeking records related to “discrete, identifiable agency activities, operations, or programs . . . .” 43 C.F.R. § 2.48(a)(1). In this manner, “the logical connection [] between the content of the records and the operations or activities of the Federal government” is self-evident. *Id.* § 2.48(a)(2)(ii).

Furthermore, disclosure of the requested records will contribute significantly to the public’s understanding of the government’s operations or activities. *Id.* § 2.48(a)(2). As NPS itself has recognized, wild “[h]orses were an important part of the cultural landscape when

Theodore Roosevelt lived in the area and they are a very popular visitor attraction today.” NPS, *Theodore Roosevelt National Park: Foundation Document* at 10 (2014). As such, the public has a strong interest in better understanding how NPS manages the wild horse herds under its jurisdiction. Disclosure of the requested records will serve that interest by allowing the public to understand how NPS determines whether and when there is an excess number of horses on the TRNP such that roundups and removals become necessary. The requested records will also serve the public’s interest in these herds by shedding light on how NPS assesses the environmental implications of its periodic management decisions regarding this “very popular” park resource. Likewise, because NPS concedes these wild horses are “significant because of the presence of feral horses in this area during Theodore Roosevelt’s time,” 1978 EA at 1, the requested identifying information, in combination with existing genetic information, will allow the public to understand to what degree the modern herds in the park are in fact representative of those present in the area “during Theodore Roosevelt’s time.” This information will also allow the public to determine whether NPS is effectively minimizing inbreeding, which the agency itself has found to be necessary “[t]o maintain a healthy, aesthetically pleasing herd . . . .” 1978 EA at 3. For all these reasons, the records sought by CHWHA would be “meaningfully informative.” 43 C.F.R. § 2.48(a)(2)(i).<sup>1</sup>

Disclosure of the requested records “will contribute to the understanding of a reasonably broad audience of persons interested in the subject . . . .” *Id.* § 2.48(a)(2)(iii). CHWHA has a significant online following, with well over 80,000 supporters, all of whom are keenly interested in the horses affected by NPS’s management decisions on the TRNP. CHWHA routinely posts information on its social media page, which is frequently trafficked by supporters, members of the public, and media outlets. CHWHA will also likely disseminate information obtained from these records by writing reports and/or press releases describing how NPS is managing wild horses on the TRNP, and whether those management efforts are contributing to the sustainable health of these herds. CHWHA’s proven record of disseminating information to the broader public, legislators, and media in the manner described above is demonstrative of its “ability and intent to disseminate the information to a reasonably broad audience.” *Id.* § 2.48(a)(2)(v). The organization’s plan to continue disseminating information obtained through the requested records is also representative of its concrete “plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons.” *Id.* § 2.48(a)(2)(iv).

Finally, as noted above, CHWHA is devoted to protecting the wild horses that reside in the TRNP, and ensuring that these herds continue to thrive in the park. CHWHA’s officers and co-founders have documented and studied the wild horses that live in the TRNP since 2016, and are uniquely familiar with the individual animals that comprise those herds. As such, CHWHA retains extensive “expertise” in the TRNP herds. *Id.* By photographing these animals on a near weekly basis, and keeping the public apprised of the animals’ health and welfare through their extensive public outreach campaigns, CHWHA’s officers seek to

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<sup>1</sup> Because the requested information has not been made public, it is not “already readily available . . . from other sources or easily accessible to the public.” 43 C.F.R. § 2.48(a)(2)(i). Likewise, the requested information, which is not already available, does not merely “confirm or clarify data that has been released previously.” *Id.* § 2.48(a)(2)(vi).

further CHWHA's core mission, thereby significantly enhancing "the public's understanding of the subject in question . . ." *Id.* § 2.48(a)(2)(vii).

*II. Disclosure of the Requested Information is Not Primarily in the Commercial Interest of the Requesters*

CHWHA does not have any commercial interest in the requested information. CHWHA is a non-profit organization that does not make commercial use of information obtained through FOIA requests or other record disclosure forums.<sup>2</sup> As noted above, CHWHA works through advocacy, education, and public outreach to ensure the protection and sustained welfare of the wild horses that inhabit the TRNP. CHWHA has no commercial interests in these records, and instead intends to utilize such records exclusively to ensure that NPS's management of wild horses on the TRNP complies with all applicable federal laws.

In short, because CHWHA is a non-profit organization with no commercial interest in the disclosure of the requested information, disclosure is clearly "[n]ot primarily in [CHWHA's] commercial interest." 43 C.F.R. § 2.45(a)(2). Instead, disclosure is in the public interest, which will be well-served by CHWHA obtaining and disseminating this information to the public. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Further, because as a non-profit organization CHWHA has no commercial interest in the information, the extensive public interest in this information, as described above, vastly outweighs the non-existent commercial interest here. *See* 43 C.F.R. § 2.48(b)(4) (noting that the agency "will not find that disclosing the requested records will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure").

CONCLUSION

Please respond to this request within 20 working days, as FOIA requires. Thank you for your time and attention to this matter. Email is the best way to reach me regarding this FOIA request; please use the email address listed below for any such correspondence.

Sincerely,



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<sup>2</sup> Although CHWHA's officers operate a for-profit store in Medora, North Dakota, called "Chasing Horses," the records requested here are sought on behalf of Chasing Horses Wild Horse Advocates, a non-profit organization focused solely on the preservation and protection of the TRNP's wild horse herds. The requested records will not be used in any way by Chasing Horses' for-profit business in Medora. Hence, for the reasons stated above, Chasing Horses Wild Horse Advocates has no commercial interest in the requested records.

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**CC (via email):**

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