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Mr. Washburne:

We write to provide input regarding OPIC's consideration of financing for the PT. Domas Agroiinti Prima (DAP) Oleochemical Project – Medan, Indonesia Project. This input represents our preliminary concerns pending subsequent investigation and information to be provided by us and partner organizations.

Palm oil, used in over half the food and cosmetics on our shelves, as well as in biofuels in many countries, is the single fastest growing driver of deforestation and displacement of forest-dwelling indigenous communities across the tropics, and is a major driver of climate change. Deforestation is responsible for some 10-15 percent of global greenhouse gas emissions – more than the emissions from all the cars, trucks, trains, and buses in the world each year combined.<sup>1</sup> While palm oil production damages the environment as a whole, it has a particularly acute impact on the human rights of marginalized people in the global south, through coercive takeovers of their lands, well-documented labor abuses, and far-reaching impacts on cultures and livelihoods. As such, it is neither sustainable nor just.

As the palm oil sector's environmental and social impacts become more widely recognized, investments in these destructive palm oil companies are becoming increasingly risky. Palm oil, along with soy, timber, pulp and paper, cattle, and a number of the other crops, has become recognized by private finance sector as a "[forest-risk commodity](#)" – that is to say, a commodity that bears inordinate risk of driving deforestation and associated environmental and human rights risks.

Many banks and institutional investors are increasingly adopting policies to prevent financing of companies that produce forest-risk commodities and that operate in ways that are illegal or unethical. The Norwegian Government Pension Fund, for example, excludes most of the world's largest palm oil companies because they fail to meet the fund's ethical criteria.<sup>2</sup> Similarly, global supply chain actors are applying increasingly strict criteria to prevent exposure to risks related to palm oil production: In December 2017, one of the largest palm oil traders, Cargill, [suspended business](#) with a major

<sup>1</sup> A. Baccini, et al., *Estimated Carbon Dioxide Emissions from Tropical Deforestation Improved by Carbon-Density Maps*, 2 NATURE CLIMATE CHANGE 182 (2012), <https://www.nature.com/articles/nclimate1354>.

<sup>2</sup> Hanna Kozłowska, *Norway's Giant Wealth Fund Decides that Palm Oil Is Terrible*, QUARTZ (Aug. 15, 2015), <https://qz.com/481186/norways-giant-wealth-fund-decides-that-palm-oil-is-terrible/>.

Guatemalan palm oil supplier, REPSA, due to human rights violations and environmental degradation. Subsequently, another giant palm oil industry giant, Wilmar International, “put a hold” on purchases from REPSA. These are just the most recent examples of many cases wherein local plantation companies are cut off from global markets due to poor environmental and human rights performance.

There are numerous indications that PT Bakrie Sumatera Plantation Tbk, the parent company of the PT. Domas Agointi Prima (DAP) Oleochemical Project, fits the profile of a company that represents a set of serious risks to financial backers, local rights-holders, and the environment. Our initial review of project documents reveals serious flaws in the company’s environmental analysis that we believe will heighten these risks.

### **Environmental and Social Impact Assessment Flaws and Violations of OPIC Environmental and Social Policy Statement.**

An OPIC-compliant Environmental and Social Impact Assessment has yet to be produced. According to OPIC’s Initial Project Summary:

The Project is screened as Category A because the Project may have impacts that are significant and irreversible. The Project site is located very near residents in the community; therefore community health and safety concerns, including air quality and noise impacts, increased traffic from the Project, and safety of local fishermen once the jetty is operational, may be significant. In addition, palm oil projects are particularly sensitive from a social and biodiversity perspective in the absence of robust supply chain management. Other environmental and social issues include occupational health and safety, fire safety and emergency response, wastewater quality and solid waste disposal, handling and storage of fuel, oils and hazardous materials, and community engagement.<sup>3</sup>

OPIC’s screening of the project as Category A is correct and thus mandates the agency to follow its Environmental and Social Policy Statement (ESPS) requirement that a robust environmental and social impact assessment be conducted. Moreover, OPIC mandates project sponsors to meet the requirements of the IFC Performance Standards<sup>4</sup> which require, among other things, an Environmental and Social Assessment and Management System.<sup>5</sup>

OPIC’s Environmental and Social Documents web page provides a number of documents related to the project,<sup>6</sup> however none comprise an adequate Environmental and Social Impact Assessment and Management System. For example, OPIC provides an Environmental Evaluation Document that asserts project environmental approval pursuant to Indonesian environmental and social policy,<sup>7</sup> but not OPIC

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<sup>3</sup> OPIC. Initial Project Summary, [https://www3.opic.gov/Environment/EIA/domas/Initial\\_Project\\_Summary.pdf](https://www3.opic.gov/Environment/EIA/domas/Initial_Project_Summary.pdf).

<sup>4</sup> OPIC. Environmental and Social Policy Statement (Jan. 2017), [https://www.opic.gov/sites/default/files/files/final%20revised%20ESPS%2001132017\(1\).pdf](https://www.opic.gov/sites/default/files/files/final%20revised%20ESPS%2001132017(1).pdf).

<sup>5</sup> IFC. Performance Standards on Environmental and Social Sustainability (Jan. 1, 2012), [http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS\\_English\\_2012\\_Full-Document.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES).

<sup>6</sup> <https://www.opic.gov/doing-business-us/OPIC-policies/environment/documents>

<sup>7</sup> OPIC. Environmental and Social Project Documents, [https://www3.opic.gov/Environment/EIA/domas/DELH\\_Industrial\\_Zone/Amdal\\_for\\_Industrial\\_Estate\\_\(SIP\)\\_Translated.pdf](https://www3.opic.gov/Environment/EIA/domas/DELH_Industrial_Zone/Amdal_for_Industrial_Estate_(SIP)_Translated.pdf) (last visited Jan. 5, 2018).

and other finance institutions' policies. In an apparent attempt to address this, OPIC provides a Supplemental Environmental and Social Impact Assessment Report (Supplemental Report), conducted by ESSA International for Pacific Harbor Group (whose connection to the project sponsor is not stated). The Supplemental Report states as its purpose to identify "a number of environmental and social information gaps or follow-up questions that needed to be addressed prior to financial closure," particularly those related to the IFC Performance Standards. Moreover, the Report states:

It should be noted that this ESIA does not constitute a comprehensive environmental and social assessment and does not guarantee the Project's ongoing compliance with IFC Performance Standard during operations. However, it does provide a consolidated overview of the known risks and impacts at the time of this assessment, the environmental and social management plans and tools developed by DAP/BSP and an evaluation of current conformance of the Project with IFC standards.

This acknowledgement provides strong evidence that the Supplementary Report is a gap analysis, not the robust environmental and social assessment required by OPIC and IFC. OPIC cannot and should not fund a project with such scant and inadequate environmental and social analysis, particularly for a project presenting substantial risk.

**Supply Chain Concerns and Violation of OPIC's Forest Policy Provisions:** The lack of adequate environmental and social assessment on the project is particularly acute with regard to palm oil supply chain issues, which OPIC states "are particularly sensitive from a social and biodiversity perspective in the absence of robust supply chain management."<sup>8</sup> Despite these critical social and biodiversity sensitivities, the 85 page Supplemental Report provides a scant two pages to supply chain risks and management. The Supplemental Report seeks to back up its scarce assertions based on a separate Feedstock Supply Chain Management Action Plan, which itself is a cursory and undetailed four page document with no visible author.<sup>9</sup>

The Feedstock Supply Chain Management Action Plan is deeply flawed in a number of other ways, including:

- Its commitment to the Indonesian Sustainable Palm Oil initiative (ISPO) and the Roundtable on Sustainable Palm Oil (RSPO) is insufficient to prevent deforestation and human rights risks. While the RSPO has recently increased the number and frequency of actions it takes to penalize violations of its [principles and criteria](#), such actions are often too little, too late. RSPO has been broadly criticized for "failing to address the concerning and harmful practices of many palm oil companies it certifies as socially and environmentally ethical...as well as failing to identify situations where companies are using trafficked labor, razed forests of High Conservation Value, and destroyed crucial animal habitats."<sup>10</sup> ISPO faces similar concerns, and has been in place for many fewer years. Neither of these certification schemes is legally binding.<sup>11</sup>

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<sup>8</sup> Initial Project Summary, *supra* note 3.

<sup>9</sup> Feedstock Supply Chain Management Action Plan for PT Domas Agroiinti Prima, [https://www3.opic.gov/Environment/EIA/domas/Supplemental\\_ESIA/Bakrie\\_DAP\\_updated\\_management\\_plans/Feedstock\\_Supply\\_Chain\\_Management\\_Action\\_Plan.pdf](https://www3.opic.gov/Environment/EIA/domas/Supplemental_ESIA/Bakrie_DAP_updated_management_plans/Feedstock_Supply_Chain_Management_Action_Plan.pdf) (last visited Jan. 5, 2018).

<sup>10</sup> Cultural Survival, RSPO Failing Its Mandate to Regulate Palm Oil Industry (Dec. 3, 2015), <https://www.culturalsurvival.org/news/campaign-update-rspo-failing-its-mandate-regulate-palm-oil-industry>.

<sup>11</sup> *Id.*

- Its compliance with international standards relies on the supposed commitment to adherence to these standards by its parent company, PT Bakrie Sumatera Plantation Tbk (BSP), despite well published documentation of environmental damage and human rights violations by BSP. BSP lacks a robust “No Deforestation, No Peat, No Exploitation” policy, and therefore scores low (38.4% out of a possible 100%) on credible sustainability indices such as the London Zoological Society’s Sustainable Palm oil Transparency Toolkit (SPOTT)<sup>12</sup> and is considered by the financial analysts at Chain Reaction Research to have “revenue at risk.”<sup>13</sup> The Indonesian media has documented BSP bulldozers destroying fields and burning villagers’ huts, while being protected by police officers from Indonesia’s notorious Mobile Brigades and criminal gangs.<sup>14</sup> Such practices violate the standards of both RSPO and ISPO, referred to above, yet membership in these certification bodies has not been challenged, and neither body has penalized BSP for these documented activities – revealing these standards’ inability to sufficiently mitigate risk.
- Its commitment relies on supposed compliance with international standards by third party offtake companies such as Procter and Gamble; such compliance is not legally mandated or enforced, nor is it subject to robust independent monitoring and verification. Therefore, purported enforcement of its buyers’ voluntary Corporate Social Responsibility guidelines cannot be considered a proxy for responsible practices.
- It states that its commitment relies on NGO pressure and “whistle blowing.” While civil society organizations play an important role in holding the palm oil sector accountable for environmental and social abuses, NGO monitoring is necessarily limited by capacity, fluxes in funding and staffing, and other factors. In addition, local NGOs monitoring the palm oil sector in Indonesia face frequent repression and criminalization, which undermines their ability to reliably and effectively perform their role as whistle blowers. Civil society watchdog groups therefore cannot be considered reliable agents of corporate risk management.
- It states that Feedstock will be obtained from BSP, but also from other suppliers that are not identified. The absence of identification of other suppliers suggests the possibility that DAP may source feedstock from companies involved in high-risk practices.
- It claims to ensure compliance with its standards through its own monitoring and enforcement of contractual obligations, but with no commitment to transparency of these actions to the public.

Moreover, the Supplemental Report and Feedstock Supply Chain Management Action Plan demonstrate stark violations of OPIC’s Environmental and Social Policy Statement’s forest protection provisions that mandate that:

OPIC will not support commercial forestry projects that involve the extraction of timber from Critical Forest Areas . . . or Critical Natural Habitats . . . **or the clearance of Critical Forests or Critical Natural Habitats for non-forestry activities.** [emphasis added]

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<sup>12</sup> SPOTT, Palm oil: ESG policy transparency assessments, <https://www.spott.org/palm-oil/> (last updated Nov. 23, 2017).

<sup>13</sup> Chain Reaction Research, 2017 Indonesian Palm Oil Sector Benchmark: Revenue at Risk vs. Palm Oil NDPE Sourcing (Aug. 23, 2018), <https://chainreactionresearch.files.wordpress.com/2017/09/2017-indonesian-palm-oil-sector-benchmark-revenue-at-risk-vs-palm-oil-ndpe-sourcing-170823-final.pdf>.

<sup>14</sup> Charlotte Louise Richardson, Deforestation due to Palm Oil Plantations in Indonesia (June 15, 2010), <http://palmoilaction.org.au/wp-content/uploads/2014/02/palm-oil-research-project.pdf>.

The Supplemental Report asserts that:

**DAP has committed to source its feedstock from existing plantations** and has recently developed a Feedstock Supply Chain Management Action Plan that lays out a number of legal, social and environmental standards that suppliers need to meet and that will be part of the supply contracts. [emphasis added]

The Supplemental Report (which is dated October 2017) also recommends that the:

Feedstock Supply Management Plan [include] a mechanism to **ensure feedstock does not come from a recently developed (DAP should define an appropriate time period) agricultural area which was previously under natural conditions (natural or critical habitat)**. [emphasis added]

Yet, the Feedstock Supply Chain Management Action Plan (pdf date November 6, 2017) **contains no provision to prohibit clearing of critical forests or critical natural habitat**. This undercuts the Supplemental Reports' assertion and provides evidence of a stark violation of forest protection provisions in OPIC Environmental and Social Policy Statement.

**No Alternatives Assessment – Violation of OPIC Policy:** According to OPIC's Environmental and Social Policy Statement, the required Environmental and Social Impact Assessment Process includes identification of "project alternatives and opportunities to minimize adverse impacts and maximize benefits," and also requires that all projects meet IFC Performance Standards which state:

Where the project involves specifically identified physical elements, aspects and facilities that are likely to generate environmental and social impacts, **the identification of risks and impacts will take into account the findings and conclusions of related and applicable plans, studies, or assessments** prepared by relevant government authorities or other parties that are directly related to the project and its area of influence. **These include . . . alternatives analyses . . .** [emphasis added]

Further, the Performance Standards contain alternative analysis provisions pertaining to greenhouse gasses, resource efficiency and pollution prevention, labor, water supply, natural habitats, indigenous peoples and cultural heritage.

Despite these requirements, none of the documents made publicly available on OPIC's website contain any alternative analysis. In addition, the Review of ANDAL Document for a Special Purpose Jetty, which evaluates the project proponent's environmental impact assessment for the proposed project jetty, includes a set of four questions about consideration of alternatives and determines that the answer to all questions is that there are "No alternatives considered in the ANDAL document".<sup>15</sup> This represents a stark violation of OPIC and IFC policy requirements for the assessment of alternatives.

**Biological Diversity, Wildlife and Endangered Species Violations.** OPIC's Environmental and Social Policy Statement requires that environmental and social assessments examine impacts "to any aquatic or terrestrial resources, biological diversity, including rare and endangered plants and animals and their

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<sup>15</sup> PT Hatfield Indonesia, Review of Andal Document for a Special Purpose Jetty in Asahan, North Sumatra (May 2017), [https://www3.opic.gov/Environment/EIA/domas/Supplemental\\_ESIA/Appendices/Appendix\\_D.pdf](https://www3.opic.gov/Environment/EIA/domas/Supplemental_ESIA/Appendices/Appendix_D.pdf).

habitat.” IFC Performance Standards also contain a number of stringent provisions to protect biological diversity. The project includes sources of feedstock of palm oil to an oleochemical processing plant, a 22 megawatt (MW) gas power station, and a 2.7 kilometer export jetty, each of which can harm wildlife including rare and endangered species and their habitats. The catchment areas of North Sumatra, from which cultivated palm oil will be transported to the plant, include critical biodiversity hotspots that will face ongoing threats from palm oil development and expansion. Yet, the Supplemental Report, which documents gaps in the Review of ANDAL Documents, states:

Assessment of critical and endangered species: The assessment of the biological component in the AMDAL did not provide information on the existence of critical and endangered species at the project site with reference to Government Regulation No. 7 Year 1999 regarding Conservation of Flora and Fauna, IUCN Red List (International Union for Conservation of Nature and Natural Resources) and CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna)

Neither the Supplemental Report nor the other documents provided by OPIC present any assessment of biological diversity, including rare and endangered plants and animals and their habitat. This represents a gross violation of OPIC’s Environmental and Social Policy Statement and IFC Performance Standards.

### **OPIC Must Comply with the U.S. Endangered Species Act and the National Environmental Policy Act**

Additionally, if OPIC goes forward with funding the Project, it must consult regarding impacts on endangered and threatened species pursuant to the Endangered Species Act (ESA). Section 7 of the ESA requires all federal agencies to “consult” with the U.S. Fish & Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS, or collectively, the Services) to “insure that *any action* authorized, *funded*, or carried out” by an agency “is not likely to jeopardize the continued existence” of any listed species.<sup>16</sup>

An agency must initiate formal consultation with the Services if a proposed action “may affect” a listed species.<sup>17</sup> The “may affect” threshold is extremely low; consultation is triggered by “[a]ny possible effect, whether beneficial, benign, adverse or of an undetermined character.”<sup>18</sup> After formal consultation, the Services issue a biological opinion to determine whether the agency action is likely to “jeopardize” any species’ existence.<sup>19</sup> Even if jeopardy will not occur, the Services may “suggest modifications” to the action to “avoid the likelihood of adverse effects.”<sup>20</sup>

Before committing to funding the DAP Oleochemical Project, OPIC must first consult with the Services regarding the Project’s impacts on any ESA-listed species that “may” be affected by the Project. OPIC’s funding of the Project will clearly constitute an “agency action” triggering consultation.<sup>21</sup> The Project includes construction and operation of a major palm oil production facility with feedstock purportedly to be sourced from various plantations throughout North Sumatra. However, as described above, the

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<sup>16</sup> 16 U.S.C. § 1536(a)(2) (emphasis added); 50 C.F.R. § 402.02 (defining “agency action” to mean “all activities or programs of any kind authorized, funded . . . in whole or in part”).

<sup>17</sup> 50 C.F.R. § 402.14(a).

<sup>18</sup> 51 Fed. Reg. 19,926 (June 3, 1986).

<sup>19</sup> 16 U.S.C. § 1536(b).

<sup>20</sup> 50 C.F.R. § 402.13.

<sup>21</sup> 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.02.

Project's feedstock supply chain commitments are inadequate and will thus likely result in forest clearing and destruction of critical natural habitat in Sumatra. The catchment areas of North Sumatra, from which cultivated palm oil will be transported to the plant, include critical biodiversity hotspots, providing habitat for several endangered species. ESA-listed species that the Project "may affect" include endangered orangutan, endangered Sumatran tigers, endangered Sumatran rhinoceros, and endangered white-winged wood duck.<sup>22</sup> Additionally, the Project's jetty construction and eventual shipping of the product may affect endangered marine species, as well as ESA-listed species on the high seas, including sperm, sei, and other whale and marine mammal species and sea turtles. Accordingly, OPIC is required to consult with both FWS and NMFS regarding the Projects' impacts on listed species.<sup>23</sup>

Similarly, funding the DAP Oleochemical Project requires full evaluation of impacts pursuant to the National Environmental Policy Act (NEPA). NEPA requires each federal agency, including OPIC, to produce an "environmental impact statement" to evaluate "every . . . major Federal action[ ] significantly affecting the quality of the human environment."<sup>24</sup> "Major federal actions" include "projects or programs entirely or *partly financed*, assisted, . . . or approved by federal agencies."<sup>25</sup> Further, NEPA applies to agency conduct, such as financing, that "occurs within the United States . . . , [e]ven where the significant effects of the regulated conduct are felt outside U.S. borders."<sup>26</sup> Additionally, because the Project's greenhouse gases emissions will mix in the atmosphere, climate change impacts from the Projects will be felt not only in Southeast Asia, but also in the United States.<sup>27</sup>

Accordingly, before financing the Project, OPIC must fully evaluate the Project's impacts as required by NEPA. OPIC's financing, which will likely represents a considerable portion of the overall investment for the Project, constitutes a "major Federal action," and the Project will "significantly affect[ ]" the environment, including rare habitats, ESA-listed species, water resources, air pollution, and the global climate.<sup>28</sup>

## Conclusion

OPIC is being asked to consider financing for an extremely risky palm oil project—a sector that the agency itself has identified as "particularly sensitive from a social and biodiversity perspective." Despite this high risk, environmental and social documents provided by OPIC reveal stark violations of OPIC's Environmental and Social Action Plan, IFC Performance Standards, and U.S. laws. These violations

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<sup>22</sup> See 35 Fed. Reg. 8491 (June 2, 1970).

<sup>23</sup> We note that OPIC is required to consult, despite the Project's location. While the Services' consultation regulations purport to limit Section 7's applicability to agency actions "in the United States or upon the high seas," the regulation clearly conflicts with the ESA's plain language and is therefore unlawful. 50 C.F.R. §§ 402.01(a); 402.02; see *Defenders of Wildlife v. Lujan*, 911 F.2d 117, 125 (8th Cir. 1990) (rejecting the regulation because "Congress intended for the consultation obligation to extend to all agency actions affecting endangered species, whether within the United States or abroad"), *rev'd on other grounds by Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Accordingly, OPIC cannot rely on the Services' regulation to avoid consultation, as Section 7 clearly applies to federal agency actions in foreign countries.

<sup>24</sup> 42 U.S.C. § 4332(2)(C).

<sup>25</sup> 40 C.F.R. § 1508.18(a) (emphasis added).

<sup>26</sup> *Env't'l Def. Fund v. Massey*, 986 F.2d 528, 532 (D.C. Cir. 1993).

<sup>27</sup> See *Friends of the Earth v. Mosbacher*, 488 F. Supp. 2d 889 (N.D. Cal. 2007) (finding climate impacts of foreign project occur within the U.S., triggering NEPA).

<sup>28</sup> 40 C.F.R. § 1508.18(a).

include, but are not limited to, requirements for environmental assessment, forest protection, consideration of alternatives, wildlife protection (including rare and endangered species), the U.S. Endangered Species Act and National Environmental Policy Act. We call on OPIC to immediately suspend consideration of support for the Project until and unless these violations are affirmatively resolved. We also would like to request a meeting with you and your staff on this matter at your soonest convenience.

Sincerely,

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