

[UNOFFICIAL TRANSLATION]

Commission for Environmental Cooperation

393, rue St-Jacques Ouest, Bureau 200

Montreal (Québec)

Canada H2Y 1N9

RE: CITIZEN SUBMISSION ON

EFFECTIVE ENFORCEMENT OF MEXICAN ENVIRONMENTAL LAW

I, the undersigned, Patricia Canales Martínez, in my capacity as President of Asociación Fuerza Unida Emiliano Zapata en Pro de las Áreas Verdes, A.C., to which I attest with registry entry number 16,050, volume 410, domiciled for purposes of notice at Emiliano Zapata no. 83, Colonia Los Arcos, Naucalpan de Juárez, State of México, Mexico, in accordance with Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC), hereby make the following submission:

PARTY CONCERNED

The submission is motivated by the government of Mexico's failures to effectively enforce its environmental law in connection with the establishment, administration, monitoring, and enforcement of protected natural areas, particularly Los Remedios National Park in Naucalpan de Juárez, State of México.

I hereby request that the Commission for Environmental Cooperation (CEC) give consideration to this submission since its aims, as expressed following, coincide with the mandate of the CEC as set out in Article 1 of the NAAEC as well as the Commission's program for 1996. These aims are:

- a) To improve the observance and enforcement of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) and its protected natural areas regulation with regard to the obligations to establish, regulate, administer, monitor, and enforce the law with respect to Los Remedios National Park (a federal protected natural area) in Naucalpan de Juárez, State of México.
- b) To encourage cooperation for effective enforcement of environmental law by each of the Parties.
- c) **FACTS**

1.- On 15 April 1938, a presidential order was issued by then President of the United Mexican States Lázaro Cárdenas del Río to create Los

Remedios National Park. The order (Appendix 1), in its preamble, states as follows:

“WHEREAS this place has preserved the most ancient traditions and is visited by numerous tourists, and it is therefore necessary to improve its current condition through reforestation with ornamental and forestry species, which add attractiveness to an area that also constitutes a site of interest as regards the architecture of the colonial aqueduct and temple, thus constituting an attractive site for tourism in general;

“WHEREAS the reforestation work being done in this area by the Department of Forestry, Hunting and Fishing will restore lost vegetation and consequently protect the hills from the physical agents of deterioration and restore the old forest landscape of the vicinity;

“WHEREAS this region would not be suitably preserved nor could it be appropriately developed for tourism if it were abandoned to private interests...”

It is therefore evident that as of 1938, the aesthetic and cultural importance of this region were recognized, leading the authorities of the time to declare it a national park.

Likewise, the preamble acknowledges the need to improve the status of the region as it stood in 1938 through reforestation. It implicitly acknowledges that the region had undergone some environmental deterioration (“lost vegetation”), hence reforestation and the executive order were necessary.

2.- On 3 November 1995, a coordination agreement between the Ministry of the Environment, Natural Resources, and Fisheries (*Secretaría de Medio Ambiente, Recursos Naturales y Pesca*—Semarnap) and the Government of the State of México was published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) establishing the basis upon which Semarnap, acting by the National Institute of Ecology (*Instituto Nacional de Ecología*—INE), transferred to the Government of the State of México the administration of various national parks located within the latter’s territory, as indicated in Appendix 2.

The first clause of the agreement establishes that its object is to establish the basis for the transfer by INE to the Government of the State of México

of responsibility for administration of a list of national parks, the third of which is Los Remedios National Park.

The second clause establishes what is meant by administration: the execution, control, and evaluation of conservation, protection, and development activities carried out in the parks.

In the twelfth clause, the Natural Parks and Wildlife Commission (*Comisión Estatal de Parques Naturales y de la Fauna*) of the State of México is designated as the entity responsible for fulfillment of the coordination agreement.

3.- In 1986, an administrative cooperation agreement was signed by the Federation, the Government of the State of México, and the Municipality of Naucalpan de Juárez for the conservation, protection, enforcement, promotion, and development of Los Remedios National Park. The state government and the municipality undertook to comply with the technical standards enacted by the Department then called the Ministry of Urban Development and Environment (*Secretaría de Desarrollo Urbano y Ecología*—SEDUE). This agreement has been renewed several times since it was first signed.

4.- Currently, the park is administered by the Municipality (*Ayuntamiento*) of Naucalpan.

5.- Currently, the three levels of government are obligated to protect and preserve Los Remedios National Park.

6.- LGEEPA Articles 62, 63, 64, 64 Bis, 65, 66, 67, 74, 75, 75 Bis, 76, 77, 78, and 78 Bis establish conservation guidelines and management programs for protected natural areas.

FACTS

- a) In violation of the LGEEPA provisions, the institutions responsible for administration of Los Remedios National Park have not to date set about creating a management program for the park, leading to a situation of generalized disorder in which incursions are common practice and are not addressed even when reported to these same institutions.

According to document no. FOO DRCEN/1007/06 (Appendix 3) signed by Guillermo Ramirez Filippini, Regional Manager, National Protected Natural Areas Commission (*Comisión Nacional de Areas Naturales Protegidas*), Central and Neovolcanic Axis Branch (*Dirección Regional Centro y Eje Neovolcánico*), he made a report to Alberto Rojas Rueda, Technical Secretary of the Environment and Natural Resources Commission (*Comisión de*

Medio Ambiente y Recursos Naturales) of the Chamber of Deputies (*Cámara de Diputados*), LX Legislature, stating as follows:

“In re your file CMARN/514/08 requesting the status of Los Remedios National Park, created by executive order on 15 April 1938:

“Los Remedios National Park was indeed created on that date. Further information about its administrative history is described below:

“1. A coordination agreement for transfer of administrative responsibility from the federation to the state government was signed on 29 September 1995 and published on 3 November 1995 in the Official Gazette of the Federation.

“2. In 1986, an administrative cooperation agreement was signed by the federation, the Government of the State of México, and the Municipality of Naucalpan de Juárez for the conservation, protection, enforcement, promotion, and development of Los Remedios National Park. The state government and the municipality undertook to comply with the technical standards enacted by the Department then called the Ministry of Urban Development and Environment (SEDUE). This agreement has been renewed several times since it was first signed.

“3. Currently, the park is administered by the Municipality of Naucalpan.

“In light of the foregoing, it continues to be a federal protected natural area.”

Another document, no. F00.6.DRCEN/0166/2009 (Appendix 4), also signed by Guillermo Ramírez Filippini, in response to a query from the president of the borough committee (*delegada municipal*) of Jardines de San Mateo, stated as follows:

“In reference to your letter requesting support from the National Protected Natural Areas Commission for conservation of the ‘Cerro de Moctezuma’ archeological zone in Naucalpan:

“With reference to LGEEPA Article 46, I hereby inform you that said archeological zone, despite being situated within the bounds of Los Remedios National Park ...”

From these documents it is clearly evident that Cerro de Moctezuma (Moctezuma Hill), the first parcel of land mentioned in the executive order, and Cerro de Moctezuma is in itself a boundary marker of Los Remedios National Park and as such cannot be taken in part but only as a whole, as it is considered by the terminology of INEGI:

Cerro (hill): Landform of altitude lower than a mountain.

<http://cuentame.inegi.gob.mx/glosario/c.aspx?tema=G>.

Nevertheless, in the face of all the facts, the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*) determined that it has no jurisdiction in this matter and stated in document no. PFPA/ZMVM/OD/196.3/2791/08 and its appendices (Appendix 5) that only part of the hill, and not the entire hill, is within the bounds of the national park.

According to page one, paragraph four of document no. 224022000/DRVMZNO/767/2008 (Appendix 6) from the Ministry of Urban Development (*Secretaría de Desarrollo Urbano*) signed by Juan Carlos González Escutia, architect, “A search in the Naucalpan municipal archives [*Residencia Local Naucalpan*] determined that the area comprised by the 14 lots located on the slope of Cerro de Moctezuma, facing Calle Cerrada de Moctezuma [street], is located outside the bounds of Los Remedios National Park...”

According to document no. DGDU/4343/08 (Appendix 7) from the Urban Development Department (*Dirección General de Desarrollo Urbano*) of the Municipality of Naucalpan de Juárez:

“Said subdivision was authorized by state executive order published in State Gazette no. 21 of 11 September 1963, which authorized a residential subdivision called ‘Colina de San Mateo Secciones A y B’”

Section “D” paragraph 9 states as follows:

“The fourteen lots at issue [the referred subdivision underwent a land use change] are recognized neither in the subdivision nor the resubdivision of the aforementioned Balcones de San Mateo development, hence it is not known whether they were subdivided....”

From the foregoing considerations, we conclude that the competent institutions at the three levels of government are not taking responsibility for the protection and preservation of the remnant of Los Remedios National Park. Another situation relates to the fact that the drafting of the Urban Development Plan to which the same document refers [is that it] does not respect the existing boundaries of Los Remedios National Park. The result has been to affect the land of all the hectares of greenspace within the affected area of Los Remedios National Park, since physically only a little over one hundred hectares remain.

b) According to document no. 212130000/DGOIA/OF/1135/08 (Appendix 8) from the Ministry of the Environment of the State of México regarding a citizen submission in connection with another area of greenspace within the bounds of Los Remedios National Park, yet (sic) the Municipality of Naucalpan decided to carry out a project with funding from the “HABITAT” program and municipal funds, which is incompatible with the function of protected natural areas. The document states on page one, fourth paragraph: “Semarnat, by means of document no. 1 S.G.P.A./DGIRA/DG/1075/08 of 18 April 2008, notes that the project developer, pursuant to LGEEPA Article 28 paragraphs VII and XI as well as Articles 5(O) paragraph I and 5(S) of the Regulation to the LGEEPA respecting Environmental Impact must file with this Ministry an application for environmental impact authorization supported by an environmental impact statement.”

However, DFMARNAT/0839/2008, which is referred to in the third paragraph on the second page of document no. SMA/CEP/DGC/364/08 (Appendix 9) from the State Natural Parks and Wildlife Commission, states as described in this latter document: “In relation to the content of document no. DFMARNAT/0839/2008 of 10 April 2008, attached to your letter, that document indicates on page two that after CONANP [*Comisión Nacional de Áreas Naturales Protegidas*, National Protected Natural Areas Commission] noted that the lot known as “El Torito” is located within the area expropriated by order of the Federal Executive Branch in 1970, the State of México office of Semarnat, based on the legal opinion of the Legal Affairs Coordination Unit [Unidad de Coordinación de Asuntos Jurídicos] of Semarnat, determined that the executive order declaring Los Remedios National Park was subject to a tacit exclusion, exclusively as regards those lands which, by disposition of the Federal Executive Branch, were set aside at a later date for purposes determined on the grounds of public utility, consisting of residential and urban development of the area expropriated by means of the order of 12 November 1970, this State Natural Parks and Wildlife Commission yields to the opinion contained in document no. DFMARNAT/0839/2008 of 10 April 2008.”

From the manifest irregularities in these documents, we can argue basically two things: 1) that the executive order of 1970 does not supersede or affect the executive order that created Los Remedios National Park and does not correspond to the same place; 2) earlier in time, stronger in right, and thus

there is no legal validity to the assertions contained in the above-mentioned document.

- c) As to the file we present relating to Inmobiliaria Desarrolladora Mayorca (sic) containing permits to cut 120 trees in the aforementioned PNA that were obtained as the result of a usucaption judgment, these permits are null and void as of right, since apart from the rights retained by virtue of its being Property of the Nation, the company has never held possession of the site, and also since on 14 February 2007, the company was definitively denied environmental impact authorizations by the Office of the Deputy Minister of Management for Environmental Protection (*Subsecretaria de Gestión para la Protección Ambiental*). On this basis, we citizens took it upon ourselves to file the necessary complaints. On 8 September 2006 the Office of the Attorney for Environmental Protection (*Procuraduría de Protección al Ambiente*) of the State of México closed down the site due for lack of an environmental impact assessment. The developer appealed to the administrative tribunals and lost the case, which is now *res judicata*. The outcome of all this is that there has been no order to demolish the walls that the developer succeeded in building nor to repair the damage done to the one and a half hectares located next to Los Remedios National Aqueduct, leaving unresolved a matter of extreme importance that is unquestionably within its jurisdiction and responsibility.

This means that the Mexican authorities HAVE NOT FULFILLED THEIR OBLIGATIONS TO ENFORCE THE ENVIRONMENTAL LAW since they have permitted the unsustainable use of natural resources and the degradation of the area as mentioned in the first and fourth paragraphs of the preamble, thus violating LGEEPA Article 50 respecting the management of national parks.

From the foregoing exposition one may conclude that there has been a FAILURE TO ENFORCE the following legal provisions:

1.- GENERAL PUBLIC ADMINISTRATION ACT (*LEY ORGÁNICA DE LA ADMINISTRACIÓN PÚBLICA*)

ARTICLE 32 Bis.- The Ministry of the Environment and Natural Resources has responsibility for the following matters:

VI. Proposing to the Federal Executive Branch the establishment of protected natural areas and, for the purposes of their administration, monitoring, and enforcement, arranging for the participation of the federal or local authorities as well as universities, research centers, and individuals.

VII. Organizing and administering protected natural areas and supervising the work of conservation, protection, and monitoring of such areas where their administration falls to state and municipal governments or natural or legal persons.

There is a failure to enforce this provision in that Semarnat has permitted and continues to permit, along with the Government of the State of México and the Municipality of Naucalpan, irregular urban habitation in a protected natural area. It permitted the deterioration of that area. While it is true that by virtue of the coordination agreement with the State of México the latter has responsibility for the administration of Los Remedios National Park, said agreement was only signed in 1995, whereas as of 1986 there was a coordination agreement in effect with the Municipality of Naucalpan, the PNA in question was created in 1938 and its administration was the responsibility of the federal government. Administrative responsibility was first under the National Institute of Ecology, then Semarnap, and then Semarnat, subsequently including CONANP and CEPANAF (*Comisión Estatal de Parques Naturales y de la Fauna*, State Natural Parks and Wildlife Commission).

2.- LGEEPA

ARTICLE 5.- The Federation has the following powers:

VIII.- To establish, regulate, administer, monitor, and enforce protected natural areas under federal jurisdiction.

There has been a failure to enforce this article for the reasons discussed in item 1 above.

ARTICLE 45.- The purpose of the establishment of protected natural areas is to:

- I. Preserve natural environments representative of the various ecosystems and biogeographical and ecological regions.
- II. Safeguard the genetic diversity of wild species upon which evolutionary continuity depends, as well as to ensure the preservation and sustainable enjoyment of the nation's biodiversity, and in particular to preserve species that are endangered, threatened, endemic, rare, or subject to special protection.
- III. Provide for the sustainable enjoyment of ecosystems and their components.
- IV. Provide a setting conducive to scientific research and study of ecosystems and their equilibrium.

- V. Create, regain, and disseminate traditional or new knowledge, practices, and technologies providing for the preservation and sustainable enjoyment of the nation's biodiversity.
- VI. Protect human settlements, roads, industrial facilities, and agricultural operations by means of forested areas on mountainsides harboring the sources of watercourses; the hydrological cycle of watersheds, as well as other features that serve to protect surrounding features having an ecological relationship to the area.
- VII. Protect the natural surroundings of archeological, historical, and artistic zones, monuments, and remains as well as tourist areas and other areas of importance for the recreation, culture, and identity of the nation and of indigenous peoples.

ARTICLE 46.- The following are considered protected natural areas:

...

III. National parks...

For the purposes of this chapter, the protected natural areas contemplated in the aforementioned paragraphs I to VIII are under federal jurisdiction.

The governments of the States and the Federal District, in accordance with the applicable local legislation, may establish state parks and reserves in relevant areas of the federated entities, having the characteristics set out in Articles 48 and 50, respectively, of this Act. Such parks and reserves may not be established in areas previously declared protected natural areas under the jurisdiction of the Federation, except as regards those contemplated in paragraph VI of this article.

Likewise, the municipalities may establish ecological preservation zones for centers of population in accordance with local legislation.

The establishment of new centers of population in protected natural areas shall not be authorized.

ARTICLE 47 Bis. For the purposes of compliance with the provisions of this Act, in relation to the establishment of protected natural areas, these latter are subject to division and subdivision with a view to identifying and delimiting the portions of the territory that they comprise, with reference to their biological, physical, and socioeconomic components, which together constitute a comprehensive and dynamic scheme, such that when the territorial delimitation of activities in

protected natural areas takes place, it must be compatible with the following zones and their respective subzones, according to their management category:

...

II. Buffer zones, whose principal function is to guide the performance of activities carried out within the zone toward sustainable development, thus creating the necessary conditions for the long-term conservation of the area's ecosystems; buffer zones are essentially composed of the following subzones:

...

g) Human settlements: In those areas where substantial modification or disappearance of original ecosystems has taken place due to the development of human settlements prior to the declaration of the protected area, and...

ARTICLE 47 Bis 1.- By means of declarations of protected natural areas, one or more core or buffer zones may be established and may be made up of one or more subzones to be determined by means of the corresponding management plan, in accordance with the management class assigned to them.

The following may be established in national parks: protection and restricted use subzones in core zones, and traditional use, public use, and recovery subzones in buffer zones.

ARTICLE 50.- National parks shall be constituted as biogeographical representations of one or more ecosystems that are of national significance because of their scenic beauty; their scientific, educational, recreational, or historical value; the existence of flora and/or fauna; their suitability for tourism development, or similar reasons of general interest.

The only activities permitted in national parks are those related to protection of their natural resources, increasing their flora and fauna and, in general, preservation of ecosystems and their components, as well as those related to ecological research, recreation, tourism, and education.

ARTICLE 65.- The Ministry shall, within the year following the publication of the corresponding declaration in the Official Gazette of the Federation, devise the management plan for the protected natural area in question, providing for

the participation of the residents, owners, and holders of the lots comprised within the area; any other competent bodies; the state, municipal, and Federal District governments, as the case may be; public, private, or community organizations, and interested individuals.

Once a protected natural area under federal jurisdiction is established, the Ministry shall designate the manager of the area in question, who shall be responsible for coordinating the formulation, implementation, and evaluation of the corresponding management plan in accordance with the provisions of this Act and any provisions ensuing from it.

ARTICLE 66.- The management plan for protected natural areas shall contain the following, at a minimum:

I. A description of the physical, biological, social, and cultural characteristics of the protected natural area in the national, regional, and local context, as well as an analysis of the status of landholding in the area in question.

II. Measures to be taken in the short, medium, and long term, establishing their bearing upon the National Development Plan as well as the corresponding sectoral plans. Such measures may comprise the following, among others: environmental research and education; protection and sustainable enjoyment of natural resources, flora, and fauna for development of recreation, tourism, infrastructure, and other economic activities for the purpose of financing the administration of the area; prevention and control of contingencies; monitoring and enforcement, and others as required given the specific characteristics of the protected natural area.

III. The manner in which the administration of the area and the participation mechanisms for individuals and communities living in the area, as well as for all persons, institutions, groups, and community organizations interested in its protection and sustainable enjoyment, will be organized.

IV. The specific objectives of the protected natural area.

V. Reference to the Mexican Official Standards applicable to any and all activities to be carried out in the area.

VII. The administrative rules applicable to the activities to be carried out in the protected natural area.

The Ministry shall publish in the Official Gazette of the Federation a summary of the management plan and the locator map of the area.

Failure to properly enforce LGEEPA Articles 45, 46, 47 Bis, and 47 Bis 1 since, as is evident from the appendices hereto, permitting the development of subdivisions on Cerro de Moctezuma and the construction of buildings within the boundaries of the National Park, (entailing the felling of trees as in the case of “El Torito”), is EXPRESSLY PROHIBITED.

The authorities have failed to effectively enforce these articles since by acting in this way, they permitted irregular urban development as discussed in the body of this submission. Such activities have little or nothing to do with the provisions of the last paragraph of Article 50, which provides that only activities related to protection of natural resources, increasing flora and fauna and, in general, preservation of ecosystems and their components, as well as activities related to ecological research, recreation, tourism, and education, are permitted in national parks.

3.- REGULATION TO THE GENERAL ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION ACT RESPECTING PROTECTED NATURAL AREAS

ARTICLE 69.- Concerning restoration plans and zones in protected natural areas, it is the responsibility of the Ministry to:

- I. Coordinate restoration activities intended to restore and reestablish the conditions for the evolution and continuity of natural processes in ecological restoration zones.
- II. Maintain the original land-use characteristics of the ecosystems to be restored, in such a way as to prevent the establishment of human settlements and the performance of activities not compatible with the objectives of restoration.
- III. Authorize the performance of economic activities in restoration zones where such activities are compatible with the measures implemented under the corresponding management and restoration plans.

While it is true that the institutions of the NAAEC, and in particular the CEC Secretariat, were founded many years after the 1938 executive order, it is also true that failures to enforce and violations of the law protecting this PNA are continuing to occur. Furthermore, no measures have been implemented to protect the remaining portion of the park. As discussed above, encroachments on the PNA in question are continuing which is contrary to restoring or recovering the park insofar as possible, especially given the existence of neighboring greenspaces that could be added to the park as a restoration measure.

In addition, there is an apparent violation of Article 11 of the International Covenant on Economic, Social, and Cultural Rights ratified by Mexico on 23 July 1981, in terms of the right to an adequate standard of living, which includes health and housing.

I further note that the following appendices form a part of the steps taken to report the various opinions and disputes relating to this submission, and I rectify the submission file to consist of 14 pages. As well, I will attach photos of the park and its current state of abandonment on compact disc.

- Document no. PFPA/ZMVM/OD/196.3/2789/08 of 24 November 2008 signed by Carmen María de Fátima García García.
- Document no. PFPA/ZMVM/DQ/81/0030-08 of 21 November 2008 signed by the Profepa Officer in Greater Mexico City (*Zona Metropolitana del Valle de México—ZMVM*).
- Email from Fuerza Unida Emiliano Zapata dated 8 September 2008.
- Unnumbered memo of 14 November 2008 signed by the Profepa Officer in Greater Mexico City.
- Locator map of house under construction on Moctezuma Street, Los Remedios National Park.
- Memo of 24 September 2008 signed by the Profepa Officer in Greater Mexico City.

PETITIONS

In light of the foregoing, and considering the facts set out in this submission, the undersigned hereby requests:

1. That the CEC kindly allow this submission and initiate an investigation to corroborate the failure to effectively enforce the environmental law in the case of LOS REMEDIOS NATIONAL PARK, NAUCALPAN DE JUÁREZ, STATE OF MÉXICO.
2. That on the basis of Articles 14 and 15 of the North American Agreement on Environmental Cooperation and by reason of the failure to effectively enforce the environmental law of Mexico, a factual record be prepared with a view to corroborating the statements made herein.

SINCERELY,

ROSA MARIA PATRICIA CANALES MARTINEZ

PRESIDENT

FUERZA UNIDA EMILIANO ZAPATA EN PRO DE LAS AREAS VERDES, A.C.