
Secretariat of the Commission for Environmental Cooperation

Article 15(1) Notification to Council that preparation of a factual record is warranted

Submitters: Salvemos Unidos el Bosque La Primavera
Juana Pérez
Submitter [*name confidential in accordance with NAAEC Article 11(8)*]
Party: United Mexican States
Original Submission: 20 July 2015
Revised Submission: 2 November 2015
Date of this notification: 4 November 2016
Submission no.: SEM-15-001 (*La Primavera Forest*)

I. INTRODUCTION

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (“NAAEC” or the “Agreement”) provide for a process allowing any nongovernmental organization or person to file a submission asserting that a Party to the Agreement is failing to effectively enforce its environmental law. The Secretariat of the Commission for Environmental Cooperation (the “Secretariat” of the “CEC”)¹ initially considers submissions to determine whether they meet the requirements in NAAEC Article 14(1). Where the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of NAAEC Article 14(2), whether the submission merits a response from the concerned Party. Where, in light of the response provided by the Party and in accordance with the Agreement, the Secretariat finds that the matter warrants the preparation of a factual record, it notifies the CEC Council of this determination. In its notification to Council, the Secretariat, in conformity with Article 15(1), provides a sufficient explanation of the reasoning for its recommendation.² By a vote of two-thirds of the Parties, the Council may instruct the Secretariat to prepare a factual record.³

II. EXECUTIVE SUMMARY

2. On 20 July 2015, Juana Pérez, representing Salvemos Unidos el Bosque La Primavera (the “Submitter”), filed a submission with the Secretariat in accordance with NAAEC Article 14 asserting that certain environmental authorities of Mexico are failing to enforce legal provisions relating to the conservation of a wildlife protection area known as “Bosque La

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation signed on 13 September 1993 by Canada, Mexico, and the United States (the “Parties”) and published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 21 December 1993 [NAAEC]. The constituent bodies of the CEC are its Council, Secretariat, and Joint Public Advisory Committee.

² For detailed information on the various stages of the submissions on enforcement matters process, as well as on the Secretariat’s determinations and factual records, visit the CEC website at <www.cec.org/submissions>.

³ NAAEC Article 15(2).

Primavera,” a protected natural area (PNA)⁴ in the municipality of Tlajomulco de Zúñiga, Jalisco, Mexico.⁵ The Submitter contends that a real estate development project, slated to occupy approximately 40 ha⁶ at a distance of 2.5 kilometers from the PNA, will have negative impacts on it.

3. On 7 August 2015, the Secretariat found that submission SEM-15-001 (*Bosque La Primavera*) did not meet the eligibility requirements of Article 14(1) of the Agreement and, pursuant to section 6.1 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”),⁷ notified the Submitter that she had sixty (60) working days in which to file a submission that met all the Article 14(1) requirements.⁸
4. On 2 November 2015, the Submitter, along with another submitter whose name is being kept confidential (together, the “Submitters”),⁹ filed a revised submission (the “Submission”) clarifying their assertions and including additional information in response to the issues noted by the Secretariat.¹⁰ The Submission asserts that Mexico is failing to effectively enforce various laws, including the Mexican Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA), the Wildlife Act (*Ley General de Vida Silvestre*—LGVS), and the Mexican Sustainable Forestry Act (*Ley General de Desarrollo Forestal Sustentable*—LGDFS), which apply to environmental impact assessment, the conservation of protected natural areas, and forested land use changes, respectively. The Submission also refers to a failure to enforce the Jalisco State Environmental Protection Act (*Ley Estatal del Equilibrio Ecológico y la Protección al Ambiente de Jalisco*—LEEEPA-Jalisco).
5. On 21 January 2016, the Secretariat found that SEM-15-001 (*Bosque La Primavera*) meets all the eligibility requirements of NAAEC Article 14(1) and requested a response from Mexico pursuant to Article 14(2).¹¹ On 21 April 2016, the Secretariat received Mexico’s response (the “Response”), which gives notice of the existence of pending proceedings and presents information relating to the enforcement of the environmental law in question.¹² On

⁴ A protected natural area is declared by presidential order where an area requiring preservation and restoration, or in which the original habitats have not been altered, is identified; see LGEEPA Article 3 paragraph II.

⁵ See SEM-15-001 (*Bosque La Primavera*), Article 14(1) Submission (20 July 2015) [Original Submission].

⁶ GVA Desarrollos Integrales, S.A. de C.V., Consolidated Technical Document, form A (10 May 2014).

⁷ *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, available at <www.cec.org/Guidelines> (viewed 2 November 2015) [Guidelines].

⁸ SEM-15-001 (*Bosque La Primavera*), Article 14(1) Determination (7 August 2015) [Article 14(1) Determination].

⁹ The revised submission includes the name of another submitter who requested pursuant to Article NAAEC 11(8)(a) that his personal information not be disclosed.

¹⁰ SEM-15-001 (*Bosque La Primavera*), Article 14(1) Submission (2 November 2015) [Revised Submission].

¹¹ SEM-15-001 (*Bosque La Primavera*), Article 14(1) and (2) Determination (21 January 2016) [Article 14(1)(2) Determination].

¹² SEM-15-001 (*Bosque La Primavera*), Article 14(3) Party Response (21 April 2016) [Response].

30 September 2016 Mexico provided updated information regarding the status of proceedings included in the Party's Article 14(3) notification.

6. Having reviewed the Submission in the light of Mexico's Response, the Secretariat finds that Submission SEM-15-001 (*Bosque La Primavera*) warrants the preparation of a factual record in regard to alleged failures to effectively enforce LEEPA-Jalisco Article 5: paragraphs XXI and XXIII with respect to the State of Jalisco's formulation and implementation of special plans and programs for restoration of ecological stability and monitoring the observance of declarations whose purpose is to regulate land use changes, resource use, and polluting activities in the area adjacent to La Primavera Forest (see paragraphs 36-40 *infra*), for the reasons set out below.

III. ANALYSIS

7. The Response, dated 21 April 2016, contains notification to the Secretariat, pursuant to NAAEC Article 14(3), of the existence of both pending proceedings and private remedies pursued by the Submitter and others, as well as other information responding to the Submitter's assertions concerning wildlife; public complaints, safety measures and sanctions; environmental impact assessment; forested land use change, and sustainable land use. Upon request from the Secretariat on the status of both proceedings, Mexico informed on 30 September 2016 that these were no longer pending.
8. Therefore, the Secretariat considers that in light of new information provided by Mexico, no analysis is required pursuant to Article 14(3)(a), since enforcement actions are no longer pending. The following sections, however, provide a summary of the proceedings which were previously pending for reference purposes, keeping in mind that certain information concerning these proceedings is still confidential.¹³

A) Proceedings implemented by Mexico with respect to the matter raised in the Submission

i) Administrative file no. PFPA/21.5/2C.28.2/0147-15

9. The information attached to the Response includes the public complaints filed by the Submitters in relation to an urban development that will allegedly affect the biological corridor of Bosque La Primavera in the locality of Tlajomulco, between El Palomar, San José del Tajo, and Santa Isabel. The first of these was filed on 26 May 2015 with Profepa-Jalisco.¹⁴ This complaint was followed by others filed with Profepa-Jalisco and with the Office of the State Attorney for Environmental Protection (*Procuraduría Estatal de Protección al Ambiente—Proepa*), a deconcentrated body of the Jalisco State Ministry of Environment and Territorial Development (*Secretaría del Medio Ambiente y Desarrollo Territorial—Semadet*). Both relate, *inter alia*, to the building permits for the Bosque Alto project, a development proposed by the company GVA Desarrollos Integrales in the vicinity of Bosque La Primavera that would deforest approximately 60 hectares.¹⁵

¹³ Response, at 3 and email communication from the Semarnat's General Counsel office (11 October 2016) indicating that only Profepa can determine when such information is no longer considered confidential.

¹⁴ Response, Appendix A: public complaint filed with Profepa-Jalisco (26 May 2015).

¹⁵ Response, Appendix A: public complaints filed with Profepa-Jalisco (26 May, 28 May, 9 June, 6 July, 12 June, 15 June, 28 September, 3 December, and 5 February 2016).

10. The complaints, initially filed with the Office of the President of the Republic (*Presidencia de la República*),¹⁶ Semadet, and the Semarnat office in Jalisco (Semarnat-Jalisco)¹⁷ — were referred to and processed by Profepa-Jalisco,¹⁸ which accepted them for processing as and when they were received by or filed with other government bodies;¹⁹ notified the complainants, the municipality of Tlajomulco de Zúñiga,²⁰ and the company²¹ that processing had begun,²² and consolidated the complaints into a single file.²³
11. On 1 June 2016 Profepa issued an administrative resolution which concluded four administrative proceedings in connection with the complaints filed before Profepa.²⁴
 - ii) **Administrative proceeding initiated by the city council of Tlajomulco de Zúñiga**
12. Mexico advises in its Response that on 13 November 2015, the city council of Tlajomulco de Zúñiga filed an administrative remedy with Semarnat-Jalisco against the forested land use change approval (*cambio de uso de terrenos forestales*, CUSF),²⁵ noting the alleged failure to notify the city council and, as a result, the violation of its guarantee of a hearing to give it an opportunity to defend the interests of the residents of Tlajomulco and of the environment.²⁶ Semarnat-Jalisco allowed the remedy, which was subsequently dismissed as invalid as regards the guarantee of a hearing; it processed the appeal of the approval of the CUSF, and granted the temporary suspension of the CUSF approval.²⁷
13. On June 22 2016 Semarnat issued an administrative resolution which validated the CUSF permit and, as a result, it terminated the administrative proceeding initiated by the city council of Tlajomulco de Zúñiga. According to the information provided by Mexico, the

¹⁶ Response, Appendix A: letters to the Office of the President of the Republic (2 July 2015).

¹⁷ Response, Appendix A: complaint filed with Semarnat-Jalisco (21 October 2015)

¹⁸ Response, Appendix A: Profepa, file nos. 497/446/15 (1 June 2015) and 551/500/15 (7 July 2015); and Semarnat, file no. SEMARNAT/JAL/U.J./386/2015 (5 November 2015).

¹⁹ Response, Appendix A: Profepa, file nos. PFPA/21.7/1088-15-004664 (2 June 2015), PFPA/21.7/1401-15-006447 (3 July 2015), and PFPA/21.7/1419-15-006465 (8 July 2015).

²⁰ Response, Appendix A: Profepa, file no. PFPA/21.7/2209-15-011861 (10 November 2015).

²¹ Response, Appendix A: Profepa, file no. PFPA/21.7/1092-15-004686 (2 June 2015).

²² Response, Appendix A: Profepa, file nos. PFPA/21.7/1089-15-004685 (2 June 2015), PFPA/21.7/1206-15-005284 (11 June 2015), PFPA/21.7/1238-15-005467 (16 June 2015), PFPA/21.7/1237-15-005460 (16 June 2015), PFPA/21.7/2023-15-0010987 (9 October 2015), PFPA/21.7/2085-15-011362 (26 October 2015), and PFPA/21.7/2085-15-011362 (26 October 2015).

²³ Response, Appendix A: Profepa, file nos. PFPA/21.7/1205-15-005283 (11 June 2015), PFPA/21.7/1233-15-005458 (16 June 2015), PFPA/21.7/1986-15-010989 (9 October 2015), PFPA/21.7/2091-15-011366 (26 October 2015), and PFPA/21.7/2208-15-011860 (10 November 2015).

²⁴ Profepa, Document No. PFPA/21.7/0990-16 (1 July 2016), in information provided by Mexico after the Response.

²⁵ This approval was issued in file no. SGPARN.14.02.01.01.638/15 (19 May 2015).

²⁶ Response, at 3-4.

²⁷ *Ibid.*, at 4 and Appendix C: Semarnat Branch Office in Jalisco: Document No. SEMARNAT/JAL/U.J/420/2015 (17 November 2015).

administrative resolution issued by Semarnat was not appealed and as a result the matter was concluded.²⁸

B) The assertions of Submission SEM-15-001

i) Enforcement of wildlife-related provisions

a. LGVS Articles 7, 8, 9 paragraphs I, IV and XXI, and 10 paragraph I

14. The Submitters assert that the area in which the real estate project is located is contiguous to Bosque La Primavera and allegedly constitutes a transition zone warranting protection due to the fact that the implementation of the Project “will severely affect the zone of influence, principally along the biological corridors.”²⁹ The Submitters assert that “in relation to LGVS Articles 7, 8, 9, and 10, establishing concurrent jurisdictions for the municipalities, the states, and the Federal District as regards wildlife ... the authorities are failing to exercise their powers within their respective spheres of jurisdiction.”³⁰ LGVS Article 7 establishes concurrent jurisdiction for the municipalities, the state governments, and the federal government vis-à-vis wildlife. LGVS Articles 8, 9, and 10 establish the powers of the different orders of government as regards the formulation and implementation of national and state policies on the conservation of wildlife and its habitat.
15. Concerning the enforcement of LGVS Articles 7, 8, 9 paragraphs I, IV and XXI, and 10 paragraph I, Mexico states that these provisions are declarative in nature and, in some cases, merely enunciate the manner in which the different orders of government must exercise their powers, but that they are not precise enough to be directly applied to the matter raised by the Submitters.³¹ In addition, the Party contends that while the Submission discusses the manner in which the Jalisco state authorities are to exercise their powers, it does not specifically state which of these powers are not being effectively exercised.³² The Response does not address whether the provisions in question are environmental law; rather, it concerns itself with their declarative character.
16. The Secretariat is of the view that if, on the one hand, a submitter cites provisions establishing powers that are to be exercised by the environmental authorities and, on the other, asserts that these powers are not being exercised in relation to a matter raised in a submission, then the Secretariat should request a response from the Party in question, especially where one or more of the provisions meets the definition of “environmental law.” The Secretariat also has previously found that in the case of provisions related to the purpose of a legal provision, even if they qualify as environmental law, it is not possible to apply them directly, and their function is therefore that of guiding the Secretariat in its review of the effective enforcement of the provision in question.³³

²⁸ Semarnat, Administrative ruling No. 178/2015 (22 June 2016), in information provided by Mexico after the Response.

²⁹ Response, at 3.

³⁰ Submission, at 7-8.

³¹ *Ibid.*, at 5.

³² *Ibid.*

³³ SEM-09-001 (*Transgenic Maize in Chihuahua*) Article 14(1) Determination (6 January 2010), §17.

17. In this case, LGVS Article 7 establishes the principle of concurrency among the municipal, state, and federal authorities and their corresponding powers regarding wildlife. The Secretariat thus considers that its review of this provision is only with other provisions establishing specific enforcement authority under the responsibility of the state of Jalisco. As to LGVS Article 8, the Secretariat finds that it is insufficiently precise to be the subject of an enforcement review because it establishes the general authority on wildlife matters to State and Municipal authorities. The Secretariat finds the same situation with respect to article 10 as it establish the authority to develop and lead the State policy on conservation and use of wildlife, lacks sufficient specificity for an analysis on its enforcement in a factual record. Lastly, the Response contains sufficient information on the enforcement of LGVS Article 9 paragraphs I, IV, and XXI, since the federal government has taken measures to formulate national wildlife conservation policy by means of the declaration and subsequent management of Bosque La Primavera PNA.
18. The Secretariat thus does not recommend the development of a factual record with respect to LGVS Articles 7, 8, 9 paragraphs I, IV and XXI, and 10 paragraph I.

b. LGVS Articles 63 and 70

19. Concerning LGVS Article 63, it establishes that is in the public interest to conserve the natural habitat of wildlife and outlines concepts on critical habitats for purposes of wildlife conservation. Mexico argues that Semarnat “has the discretionary power to declare certain areas as critical wildlife habitat”³⁴ and that the project area “contains no species or populations at risk; that there has been no drastic decrease in the size of the area in question, nor does it harbor any ecosystem at risk of disappearing.”³⁵ Therefore, in Mexico’s view, the ideal regulatory instrument in this case is a protected natural area under federal jurisdiction and not a declaration of critical wildlife habitat, since the latter “has no technical justification in an area such as the one occupied by the Project,” which is largely urbanized. Mexico states that, in any case, the management plan for Bosque La Primavera PNA already acknowledges this area as critical habitat for representative wildlife species of the region, and that this is why the project area has not been declared as critical habitat.³⁶ Nevertheless, the Party acknowledges that certain neighboring areas are occupied by wildlife conservation management units whose purposes include the scientific collection of wildlife specimens.³⁷
20. Concerning LGVS Article 70, it stipulates that in the event of wildlife habitat destruction, pollution, degradation, desertification or imbalance, Semarnat is authorized to implement the appropriate programs. Mexico is of the view that the criteria for the enforcement of this provision do not materialize in the case of the project area, since it “exhibits a high degree of anthropogenic activity and urbanization, being surrounded by various subdivisions such as El Palomar (to the north), Los Gavilanes (to the south), Santa Isabel (to the east), San José del Tajo (to the northeast), and the Santa Anita Golf Club (to the southwest).” Mexico stresses that the execution of the project does not entail the destruction of wildlife habitat,

³⁴ Response, at 6.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

since it is located in an already urbanized area that is, moreover, outside La Primavera PNA.³⁸ Finally, Mexico adds that the State Forestry Council issued a technical opinion for the forested land use change, finding that the project does not jeopardize the area's biological diversity, that no species listed in NOM-059 are found there, and that the fieldwork done in La Primavera PNA produced records of widely distributed and abundant mammals, birds, and herpetofauna.³⁹

21. The Secretariat finds that the Party decided to establish a PNA in an area with wildlife species representative of the region, but that certain areas outside the PNA — including the project area — are already urbanized. The measures implemented by the Party appear to be reasonable and the Secretariat finds that the preparation of a factual record is not warranted in regard to the manner in which LGVS Articles 63 and 70 were enforced.

ii) Enforcement of provisions concerning public complaints, safety measures, and sanctions

a. LGVS Article 107 and LGEEPA Article 189

22. LGVS Article 107 and LGEEPA Article 189 provide for the implementation of a public complaint mechanism. The Submitters assert that “more than 5,000 public complaints” were filed with Profepa;⁴⁰ that these were not processed in a timely manner, and that the Party “ignored them ... and lifted the closing order applied to the Project.”⁴¹

23. Mexico contends that the public complaints filed in connection with the project were processed in a timely manner in every case and that processing continues, but that no sanctions have yet been decided upon. The Party states that the public complaints have to date given rise to three now-closed administrative proceedings (two concerning environmental impact and one concerning forests):⁴²

- i. One environmental impact proceeding concluding with a decision of 17 September 2015 that did not impose any sanctions, because the company involved had yet to commence any work or activities relating to the forested land use change.
- ii. One forest-related proceeding concluding with a decision of 22 October 2015 that voided the temporary total suspension of the forested land use change approval granted to the project because the Semarnat office found that there had been no violations of environmental and/or forest law.
- iii. One environmental impact proceeding concluding with an administrative decision of 17 November 2015 that did not impose any sanctions, because the company had yet to commence any work relating to the forested land use change.

³⁸ *Ibid.*, at 7.

³⁹ *Ibid.*

⁴⁰ Submission, at 10.

⁴¹ *Ibid.*

⁴² Response, at 8.

24. The Party has also provided additional information with respect to the termination of administrative file no. PFPA/21.5/2C.28.2/0147-15 related to the building permits for the Bosque Alto project proposed by the company GVA Desarrollos Integrales in the vicinity of Bosque La Primavera, which remain confidential.⁴³
25. As noted above, the Party asserts that the processing of the public complaints filed in connection with the project has resulted in four environmental impact- and forest-related administrative proceedings. The Secretariat considers that in any event, Mexico has conducted implementation of the citizen's complaint mechanism provided in Articles 189 of LGEEPA and 107 of LGVS and has make this process available to individuals. This is confirmed by the reception, consolidation, processing and resolution of numerous complaints filed before Profepa. This information, while relevant as context in a factual record, certainly would not form part of an enforcement analysis of provisions in LGVS and LGEEPA related to the citizen's complaint mechanism.
26. The Secretariat concludes that the submission does not warrant the development of a factual record with respect to articles 189 of LEEPEA and 107 of LGVS.

b. LEEPEA-Jalisco Articles 144 paragraphs I and III, 170, 172, and 174

27. The Submitters assert: "We have not received any response to our requests for intervention by the allegedly competent authorities," with the exception of a response from the city council of Tlajomulco de Zúñiga.⁴⁴ They further contend that "at no time [was Semadet] willing to take responsibility for ordering a suspension of the contested activities, ensuring ecological stability, and protecting the environment in this affected area."⁴⁵
28. Mexico contends that Semadet has stated that the Jalisco environmental authorities are not competent to address the matter raised by the Submitters and that the complaints filed were relayed to Profepa.⁴⁶ It further states that the concern expressed by the Submitters was referred to the city council of Tlajomulco de Zúñiga.⁴⁷
29. In particular, Mexico states that in regard to LEEPEA-Jalisco Articles 144 paragraphs I and III (safety measures in cases of risk of ecological instability), 170 (action by the municipal and state authorities upon taking cognizance of acts or omissions reportable to the federal public prosecutor), 172 (the right of any person to file a complaint), and 174 (requirements for filing a complaint), the Jalisco state authorities found that the matter was under either federal or municipal jurisdiction, and argued that they lack jurisdiction to hear and address the matter raised by the Submitters.⁴⁸
30. Concerning LEEPEA-Jalisco Article 144 paragraphs I and III, Proepa has contended that these are inapplicable because the LGDFS reserves that responsibility (applying safety measures in cases of risk of ecological instability) for the federal authorities in accordance

⁴³ Response, Appendix A, public complaints filed with Profepa-Jalisco (26 May, 28 May, 9 June, 6 July, 12 June, 15 June, 28 September, 3 December, and 5 February 2016).

⁴⁴ Revised Submission, at 7.

⁴⁵ *Ibid.*, at 9.

⁴⁶ Response, at 9.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

with Articles 12 paragraphs XXIII and XXIV and 16 paragraphs XVII and XXI, which provide that the federal government is competent to carry out inspection visits and surveillance and to apply the corresponding sanctions.⁴⁹ Proepa argues that, in any case, its only duty is to report the violations to the authorities having jurisdiction over forest-related matters.⁵⁰ In addition, Proepa has stated that, this being a project located on “presumably forested” land and therefore under federal jurisdiction,⁵¹ the complaints filed in relation to the matter raised in the Submission had to be relayed to Profepa since, pursuant to LGEEPA Article 5 paragraph XI, this matter is not under Jalisco state jurisdiction.⁵²

31. Concerning LEEPA-Jalisco Articles 170, 172, and 174, Mexico contends that the state authorities lack the jurisdiction to address the matter, since LGDFS Articles 158, 160, and 161 as well as Article 45 paragraphs I, II, and X of the Internal Regulation of Semarnat establish that this task rests with the federal authorities, since the matter concerns lands under federal jurisdiction. The Party contends that for the same reason, the complaints filed were referred to Profepa.⁵³
32. Having reviewed the LGDFS provisions cited by Proepa, included by Mexico in its Response, the Secretariat observes that these refer to the powers of the federal authority (Profepa) in the areas of forest-related prevention and surveillance, whose primary purpose is the safeguarding and patrolling of forests (Article 158);⁵⁴ forest-related inspection visits or operations (Article 160),⁵⁵ and applying forest-related sanctions (Article 161),⁵⁶ such as

⁴⁹ *Ibid.*, and Appendix K, Semadet, file no. 200/2016 (11 February 2016), at 1-2.

⁵⁰ Response, Appendix K, Semadet, file no. 200/2016 (11 February 2016), at 1-2.

⁵¹ *Ibid.*, at 3.

⁵² Response, Appendix F, Proepa, file no. 497/446/15 (1 June 2015), at 1.

⁵³ Response, at 9.

⁵⁴ See LGDFS Article 158:

The primary function of forest-related prevention and surveillance, which is under the responsibility of the Ministry, acting by the Office of the Federal Attorney for Environmental Protection, is the safeguarding and patrolling of forest resources and ecosystems, as well as the prevention of forest-related administrative violations.

The Federation, in coordination with the state governments and with the cooperation of the organized forest landowners, the indigenous communities, and the municipal governments and other public institutions shall formulate, implement, and evaluate comprehensive plans for preventing and combating clandestine logging, especially in previously identified and studied critical areas, so as to confront it with various measures, as well as to prevent improper land use changes, trafficking in species and forest resources, the extraction of forest soil, and the illegal transportation, storage, processing, or possession of forest raw materials.

⁵⁵ LGDFS, Article 160:

The Ministry, acting by authorized personnel, shall conduct forestry-related inspection visits or operations with a view to verifying compliance with the provisions of this Act, its regulation, the applicable Mexican Official Standards, and any other provisions flowing from them.

The owners and holders of forested land or unforested land for which forestation is the most appropriate use, the holders of approvals for the use of forest timber resources, anyone engaging in forestation or reforestation, and persons transporting, storing, or processing forest raw materials shall facilitate inspection visits or operations conducted by authorized personnel. Failing this, the safety measures and sanctions contemplated in this Act and any other applicable provisions shall be applied.

In the conduct of inspection proceedings, the Ministry shall observe the relevant formalities set out in the Mexican Environmental Protection Act.

the seizure of forest raw materials (paragraph I), the closing of facilities, machinery, or equipment used in forestry (paragraph II), or the suspension of authorized uses or acts (paragraph III). Same situation with respect to Articles 12: sections XXIII and XXIV and 16: sections XVII and XXI related to enforcement and surveillance actions on forestry matters prescribed by LGDFS.

33. LGDFS main purpose is to regulate and promote conservation, protection, restoration, production, management, development and use of forest ecosystems and its resources.⁵⁷ Pursuant to the LGDFS, forestry is “extraction, as prescribed by this Act, of forest resources from the environment in which they are found, including timber and non-timber resources.”⁵⁸ The Secretariat notes that forestry is not a matter raised in Submission SEM-15-001 (*Bosque La Primavera*): although it does refer to a forested land use change, the Submission’s description of the facts does not contain assertions concerning the use of forest resources. Neither does Mexico’s Response refer to such activities. What is more, the issues submitted to the Secretariat are not limited to the CUSF, which is under federal jurisdiction; rather, they encompass aspects over which the state of Jalisco has sufficient powers to act; for example, in relation to restoration of ecological stability (see paragraph 40) or concurrent — and coordinated — wildlife-related measures (paragraphs 17).
34. With respect to enforcement of LEEPA Jalisco Articles 6, paragraph XV, 144, paragraphs I and III, 170, 172 and 174 in connection to the processing on complaints, the Secretariat considers that even if State authorities did not directly address matters included in several complaints, these have been processed by the federal authorities and that issues raised in the Submission have been responded by Profepa through several administrative proceedings

Where, further to inspection visits or operations, it is found that there exists an imminent risk of severe harm to, or degradation of, forest ecosystems, or where acts, facts, or omissions could give rise to seizure as an administrative sanction, any of the safety measures contemplated in Article 161 of this Act may be taken, and the matter shall proceed in accordance with the provisions of Chapter IV of this title.

⁵⁶ LGDFS, Article 161:

Where it is found, further to an inspection visit or operation in accordance with the preceding article, that there exists an imminent risk of severe harm to, or degradation of, forest ecosystems, or where acts, facts, or omissions could give rise to the application of administrative sanctions, the Ministry may order the following safety measures:

- I. The seizure of forest products and raw materials, as well as of property, vehicles, implements, tools, equipment, and any instrument directly related to the act or omission giving rise to the application of this measure;
- II. The temporary partial or total closing of facilities, machinery, or equipment, as the case may be, for the use, storage, or processing of forest resources and raw materials, or of sites or facilities at which acts are taking place that may harm biodiversity or natural resources, and
- III. The temporary partial or total suspension of approved uses or of the activity in question.

At the authority’s discretion, the inspected party may be designated as the depositary of the seized property, subject to assurance that the inspected party will properly protect it.

The Ministry may consign seized timber and non-timber products to a final destination, and any funds derived therefrom shall be deposited until such time as the corresponding legal proceeding is resolved; once a final judgment is issued and the decision takes effect, the funds shall be delivered to the beneficiary of the judgment. The Regulation shall determine the mechanisms for the implementation of this provision.

⁵⁷ LGDFS, Article 1.

⁵⁸ LGDFS, Article 7 paragraph 1.

implemented as a result of citizen complaints. While the Secretariat does not recommend a factual record regarding enforcement of Articles 144: paragraphs I y III, 170, 172 and 174 of LEEEPA-Jalisco because of federal actions on this matter, it does address questions related to restoration of ecological stability and wildlife-related measures (which matter is addressed in the following section).

35. As to actions undertaken in the municipal sphere, Mexico emphasizes that while the situation contemplated by LEEEPA-Jalisco Article 144 (safety measures in cases of risk of ecological instability) has not materialized, since construction has not commenced, the city council of Tlajomulco de Zúñiga decided to shut down the project titled “San José del Tajo-Trailer Park,” whose purpose is to build the access road to the project. The developer appealed that act of authority and the matter remains pending.⁵⁹ In addition, the municipality of Tlajomulco de Zúñiga initiated legal actions in accordance with the Mexican law in order to address the issue raised by the Submitters. The Secretariat finds that no central issues remain unresolved in relation to the measures implemented in the municipal sphere to address the matter raised in SEM-15-001 (*Bosque La Primavera*).

iii) Enforcement of provisions in relation to restoration of ecological stability

36. The Submitters assert that “no plan is being implemented for restoration of ecological stability in [the project area], which already exhibits serious ecological instability due to nearby human settlements, as well as recent fires that have harmed biodiversity”;⁶⁰ they state as well that there is “an imminent risk of ecological instability and severe degradation of natural resources” due to the alleged felling of trees.⁶¹ In this regard they cite LEEEPA-Jalisco Articles 5 paragraphs XXII and XXIII, and 23 paragraph II.
37. LEEEPA-Jalisco Article 5 paragraphs XXII and XXIII provides that the state government and the municipalities are competent to formulate and implement restoration plans in areas with severe ecological instability, and also to monitor the observance of declarations issued for the purpose of regulating land uses, resource use, and polluting activities (but not environmental impact assessment). Article 6 paragraph XV provides for the suspension of activities that contravene provisions relating to ecological stability and environmental protection. As for Article 23 paragraph II, it refers to the environmental nature of the regulation of human settlements and provides that “the rectification of those cases of instability that degrade the quality of life” must be sought. The provisions in question qualify as environmental law.
38. Concerning LEEEPA-Jalisco Article 5 paragraphs XXII and XXIII, which provides for the formulation and implementation of plans and programs for restoration of ecological stability, the Party notes that although the project area is located on the territory of the municipality of Tlajomulco de Zúñiga, the state authority found that it is not competent to address the project’s environmental impact because it is an urban development project entailing a forested land use change and thus falls within the sphere of the federal

⁵⁹ Response, at 9-10.

⁶⁰ Revised Submission, at 9.

⁶¹ *Ibid.*, at 10.

authorities: environmental impact assessment of forested land use changes is reserved to the federal government.⁶²

39. However, the Response does not provide any information in relation to both powers under LEEPA-Jalisco Article 5 — formulation and implementation of special plans and programs for restoration of ecological stability (paragraph XXII) and monitoring the observance of declarations whose purpose is to regulate land use changes, resource use, and polluting activities (paragraph XXIII)— possessed by the state of Jalisco, which are among the central concerns expressed in SEM-15-001 (*Bosque La Primavera*) (see paragraph 36). Because of the lack of a response, the Secretariat finds that open central questions remain. The Response does not address enforcement of criteria for environmental regulation of human settlements as per LEEPA-Jalisco Article 23, paragraph II, a central matter raised in submission SEM-15-001.
40. The Secretariat recommends the development of a factual record with respect to the effective enforcement of LEEPA-Jalisco Article 5 paragraphs XXII and XXIII, and 23 paragraph II. A factual record can present information on the measures formulated and implemented by the Jalisco state authorities to restore the site, which has allegedly been degraded by activities of anthropogenic origin, as well as the manner in which it has monitored the observance of declarations issued with a view to regulating land uses on the lots in question.
41. Concerning the measures implemented in the municipal sphere, Mexico notes that the city council of Tlajomulco de Zúñiga has taken it upon itself to initiate various measures aimed at habitat conservation and protection of ecological stability, including administrative and judicial measures.⁶³ The Secretariat finds that the preparation of a factual record is not warranted concerning the actions of the municipal authority.

iv) Enforcement in relation to the forested land use change

42. Concerning the enforcement of LGDFS Article 117 in connection with the forested land use change approval, the Submitters assert that three cutting and transplantation will be necessary according to the CUSF application in order to undertake the real estate development.⁶⁴ LGDFS Article 117 establishes that change of forested land use only may be approved when biodiversity is not compromised and that soil erosion will not be caused. Mexico maintains that forest in the project area “is already under degradation process” due to the urban growth and that, in any case, land use change mitigation is addressed by rescuing forest species.⁶⁵ Mexico points that it is implementing a rescue program which emphasizes species recovery of ecological importance.⁶⁶ Mexico informs that the CUSF authorization imposed several obligations related to forest, including:

- That the forest outside the CUSF borders cannot be affected;
- That a three rescue program be implemented;

⁶² Response, at 19.

⁶³ *Ibid.*

⁶⁴ Revised submission, at 5.

⁶⁵ Response, at 12.

⁶⁶ *Ibid.*

- That forest removal should be carried-out through mechanical and manual means without use of chemicals;
 - That directional three removal be used so that threes do fall within areas subject to CUSF, and
 - That the resulting material is recovered and reused.
43. LGDFS Article 117 also establishes that, in case of a recorded forest fire change in land use change may only be authorized only after 20 years and once the ecosystem has been fully recovered. With respect to the alleged forest fire occurred in the project area and that this occurrence stands in the way of issuing land use change permits,⁶⁷ Mexico informs that contrary to the Submitter’s assertions, the CUSF documented a site visit conducted one year after the alleged fire and reported that “there were no evidence that forest was affected due to the fire”.⁶⁸ Likewise, the response adds that there is no evidence that the fire was caused intentionally; that the forested surface area damaged by the fire was equivalent to only one hectare while the CUSF comprises an area of 20 has; that the submission does not compare the allegedly damaged areas and the project zone and that the site was visited by technical personnel prior to issuing the CUSF.
44. The Submitters also refer to an alleged reduction in rainwater collection —which is another matter for consideration under LGDFS Article 117—,⁶⁹ Mexico maintains that the project is located in two micro-basins known as “Santa Anita” and “San Sebastian El Grande” and that according to information from the Water State Commission (*Comisión Estatal del Agua*) of Jalisco, most of these runoffs have been transformed in open drains. Likewise, Mexico informs that the project considers development of water infiltration works that will allow basin recharge in a volume similar to what may not drain due to the change in land use so that the project will not affect waterways or streams (i.e. surface waters);⁷⁰ that the project considers the development of a wastewater treatment plant and, as a result, water quality will not be compromised.⁷¹
45. The Secretariat considers that the response from Mexico addresses central questions raised by the Submitters with respect to the CUSF and provides information assertions related to three removal and transplanting, the forest fire, and the alleged reduction in rainwater runoff. The Secretariat does not find central open questions that merit the development of a factual record with respect to the effective enforcement of LGDFS Article 117.
- v) Expansion of the area protected by Bosque La Primavera**
46. The Submitters maintain that the Project is located inside the buffer zone of Bosque La Primavera PNA and the it is necessary the expansion of the protected area, in accordance with LGEEPA Articles 47 bis and 47 bis I. On this matter, Mexico states that the project is located outside the protected natural area, and that in any case the zone of influence of the

⁶⁷ Revised submission, at 4-5.

⁶⁸ Response, at 14.

⁶⁹ Revised submission, at 5-6.

⁷⁰ *Ibid.*, at 16.

⁷¹ Response, at 15-16.

PNA is vast and comprises various regions in which productive activities are occurring.⁷² Concerning the idea of expanding the boundaries of Bosque La Primavera PNA, Mexico states that it has no plans to do so because there is no technical justification for such an expansion, and because the protection goals are met by the current boundaries of the protected area.⁷³

47. It is evident from the information contained in the Submission and the Response that first, the project is within neither Bosque La Primavera PNA nor its buffer zone; Also, the project's zone of influence is vast and, in any case, the current definition of the area protected by the PNA was established according to technical criteria concerning species protection and representativeness. Mexico addresses these aspects in its Response, and the Secretariat finds the Party is taking measures that reflect the reasonable exercise of its discretion concerning the delimitation of the protected area of Bosque La Primavera PNA, which therefore fall within the scope of NAAEC Article 45(1)(a)⁷⁴ and thus the preparation of a factual record in this regard is not warranted.

vi) Enforcement concerning an urbanization permit

48. Concerning the process of issuing an urbanization permit, Mexico notes that this instrument is different in nature from a forested land use change approval. The Party states that the Submission does not address provisions relating to the process of issuing an urbanization permit and that, for this reason, the Party is not in a position to offer a response; in any case, it offers information concerning the applicable legal provisions and the manner in which the Submitters may address them.⁷⁵ The Secretariat finds that Mexico provides sufficient information in its Response on the enforcement of relevant urban development-related provisions, and that a factual record is not warranted.

vii) Enforcement in relation to environmental impact assessment

49. The Submitters assert that public consultation of the environmental impact assessment process was not conducted and that in any event, the authorization should have been denied. Likewise, the Submitters assert the alleged failure to effectively enforce Federal and State environmental impact assessment laws. Mexico contends that it is true that no public consultation was held on the Project, but that LGEEPA Article 34 paragraph I was nonetheless enforced because the application for approval of the project was published in the Ecological Gazette (*Gaceta Ecológica*) and on the Semarnat website.⁷⁶ Furthermore, Jalisco-Semarnat made the project proposal available to all interested parties, and the corresponding information can be viewed by entering the project's registry number.⁷⁷

⁷² Response, at 11.

⁷³ *Ibid.*, at 12.

⁷⁴ NAAEC Article 45(1) establishes:

1. For purposes of this Agreement:

A Party has not failed to "effectively enforce its environmental law" or to comply with Article (5) in a particular case where the action or inaction in question by agencies or officials of that Party:

a. Reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters;

⁷⁵ *Ibid.*, at 15.

⁷⁶ *Ibid.*, at 16.

⁷⁷ *Ibid.*, at 16-17.

According to Mexico, no requests for public consultation were received during the assessment procedure for the project, nor were any comments or proposals made in regard to environmental impact prevention or mitigation.⁷⁸

50. Concerning the enforcement of LGEEPA Article 35 paragraph III, Mexico contends that none of the legal grounds for denying environmental impact approval obtained, since at the time the application was filed, the project did not contravene any legal provisions, no species eligible to be declared threatened or endangered were present, nor can it be said that the project developers filed false information.⁷⁹
51. Concerning the provisions cited in the Submission that relate to environmental impact assessment by the Jalisco state authorities, Mexico contends that the matter is under federal jurisdiction and that, for this reason, the Submitters' assertions concerning failures to enforce LEEPA-Jalisco Articles 28 paragraph III and 29 paragraph II do not apply.⁸⁰ All things considered, while the matter is under federal jurisdiction, the municipality of Tlajomulco de Zúñiga did take it upon itself to apply administrative and judicial measures (addressed in paragraphs 12, 13, and 35 of this determination).
52. The Secretariat finds that Mexico's Response addresses the central assertions of the Submission in relation to the enforcement of LGEEPA Article 35 paragraph III, and that there were in fact no grounds for denying environmental impact approval to the project. The Submission does not contain any more specific assertions on this subject. In addition, in relation to the holding of a public consultation on the project pursuant to LGEEPA Article 34 paragraph I, the Secretariat has not found any issues warranting further study in a factual record. Finally, the Response provides sufficient information concerning jurisdiction over the processing of environmental impact approvals, which in this case rests with the federal authorities.

II. NOTIFICATION

53. The Secretariat has reviewed Submission SEM-15-001 (*Bosque La Primavera*), filed by Salvemos Unidos Bosque La Primavera and other submitters, in the light of the Response of the United Mexican States.
54. Moreover, the Secretariat finds that the Response leaves central issues unresolved in relation to one aspect of Submission SEM-15-001 and, in accordance with NAAEC Article 15(1) and section 9.7 of the Guidelines, recommends the preparation of a factual record in regard to alleged failures to effectively enforce LEEPA-Jalisco Article 5: paragraphs XXI and XXIII and 23 paragraph II with respect to formulation and implementation of special plans and programs for restoration of ecological stability and monitoring the observance of declarations whose purpose is to regulate land use changes, resource use, and polluting activities in areas adjacent to Bosque La Primavera (paragraphs 36-40).
55. Observing the objectives of the NAAEC, pursuant to Article 15(1) of the Agreement and for the reasons set out herein, the Secretariat hereby notifies Council of its recommendation to produce a factual record for some of the assertions and provisions referenced in the

⁷⁸ *Ibid.*, at 17.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, at 18.

Submission. With reference to Council Resolutions 01-06⁸¹ and 12-06,⁸² the Secretariat, in the event of a favorable Council vote, will make its best effort to submit a draft factual record according to the timeline set out in the Guidelines. Pursuant to NAAEC Article 15(2) and section 19.4 of the Guidelines, the Council has 60 working days, or until **15 February 2017**, to vote on and decide whether to instruct the Secretariat to prepare a factual record.

56. The Secretariat clarifies to interested members of the public and to the Submitter that neither this notification nor any factual record that may be subsequently prepared and published constitutes a determination as to the presence or absence of effective environmental law enforcement in Mexico.

Respectfully submitted for the consideration of the Council on 4 November 2016.

Secretariat of the Commission for Environmental Cooperation

(original signed)
Per: César Rafael Chávez
Executive Director, Commission for Environmental Cooperation

⁸¹ Council Resolution 01-06, “Response to the Joint Public Advisory Committee (JPAC) Report on Lessons Learned regarding the Articles 14 and 15 Process (29 June 2001).

⁸² Adoption of the amended version of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (11 July 2012).