

Secretariat of the Commission for Environmental Cooperation

**Determination of the Secretariat in accordance with Article 14(1)(2)
of the North American Agreement on Environmental Cooperation**

Submitters: Salvemos Unidos el Bosque La Primavera
Juana Pérez
[REDACTED]

Party: United Mexican States

Original submission: 20 July 2015

Revised submission: 2 November 2015

Date of the determination: 21 January 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 person or nongovernmental organization to file a submission asserting that a Party to the NAAEC 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). When 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. In light of any response from the Party and in accordance with the NAAEC, the Secretariat determines whether the matter warrants the preparation of a factual record. If it so determines, it then notifies the CEC Council and explains the reasoning for its recommendation in adherence with Article 15(1); should the Secretariat determine instead that the preparation of a factual record is not warranted, it shall proceed no further with the submission.²
2. On 20 July 2015, Juana Pérez, representing the group Salvemos Unidos el Bosque La Primavera (the “Submitters”), filed a submission with the Secretariat of the CEC, pursuant to NAAEC Article 14, in which the Submitters assert that the environmental authorities are failing to effectively enforce provisions related to protection of the wildlife conservation area (*área de protección de flora y fauna*) known as “La Primavera Forest,” a natural protected area,³ located in Tlajomulco de Zúñiga, Jalisco,

¹ The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC) signed by Canada, Mexico, and the United States (the “Parties”) and [NAAEC]. The constituent bodies of the CEC are its Council, Secretariat and the Joint Public Advisory Committee (JPAC).

² For detailed information on the various stages of the submission process, as well as on the Secretariat’s determinations and factual records, please consult the CEC website: <www.cec.org/submissions>.

³ A natural protected area is declared through a presidential decree in areas where the original environments have not been altered or when there is a zone requiring preservation or restoration. See: LGEEPA, Article 3: section II.

Mexico. The Submitters maintain that a proposed housing development project which will be located 2.5 km outside of the natural protected area, will have a negative effect in La Primavera Forest. The project in question has an area of approximately 40 ha.⁴

3. On 7 August 2015, the Secretariat determined that submission SEM-15-001 did not, in part, meet the admissibility criteria set out in NAAEC Article 14(1) and, in adherence to paragraph 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”),⁵ it notified the Submitters that they had 60 (sixty) working days to file a submission in compliance with all NAAEC Article 14(1) requirements.⁶
4. On 2 November 2015, the Submitters filed a revised submission with the Secretariat in which they clarified their assertions, provided additional information and addressed the issues raised by the Secretariat.⁷
5. In the revised submission, the Submitters assert that Mexico is failing to effectively enforce provisions —among others— from the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA); the Mexican Wildlife Act (*Ley General de Vida Silvestre*—LGVS); and the Mexican Sustainable Forestry Act (*Ley General de Desarrollo Forestal Sustentable*—LGDFS); applicable to environmental impact assessment, conservation of natural protected areas and land use change of forested areas.
6. The Secretariat has determined that the revised submission SEM-15-001 (*La Primavera Forest*) satisfies all Article 14(1) admissibility requirements and, in accordance with the criteria set out in Article 14(2), warrants requesting a response from the Government of Mexico, for the reasons detailed below.

II. ANALYSIS

7. NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or nongovernmental organization asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat has found in previous Article 14(1) determinations that Article 14 is not intended to be an “insurmountable screening device.”⁸ The Secretariat examined the submission in question with this perspective in mind.

⁴ GVA Desarrollos Integrales, S.A. de C.V., *Documento técnico unificado modalidad A* (Category A consolidated technical document) (10 May 2014).

⁵ *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, <<http://www.cec.org/guidelines>> (viewed 2 November 2015) [Guidelines].

⁶ SEM-15-001 (*La Primavera Forest*), Article 14(1) Determination) (7 August 2015) [Article 14(1) Determination].

⁷ SEM-15-001 (*La Primavera Forest*), submission pursuant to NAAEC Article 14(1) (2 November 2015) [Revised submission].

⁸ See SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998) and SEM-98-003 (*Great Lakes*), Article 14(1)(2) Determination (8 September 1999).

A Opening paragraph of Article 14(1)

8. The submission includes the Submitters' names, addresses and contact information.⁹ The Secretariat finds that the Submitters may file a submission because they are residents of North America. There is no information in the submission to suggest that any of the Submitters belong to the government or are under its direction.

1) Environmental law in question

9. In the revised submission, the Submitters assert that Mexico is failing to effectively enforce the following provisions: Articles 1, 4, 8 and 17 of the **Political Constitution of the United Mexican States** (*Constitución Política de los Estados Unidos Mexicanos*); **LGEEPA** Articles 4, 7 paragraphs VIII and IX, 15 paragraphs I, III, V, VII, VIII, IX, X, XI, XII and XIII, 34 paragraphs IV and V, 35 paragraph III, 46 paragraph XI, 47, 47 *bis*, 47 *bis* I, 53, 189 and 204; **LGVS** Articles 1, 2, 4, 5 paragraphs I and II, 7, 8, 9, 10, 15, 18, 19, 46 paragraph XI, 47 *bis* 4 paragraphs II, III, IV and V, 60, 61, 62, 63, 64, 70, 104, 106, 107 and 122 paragraphs III, IV and VII; **LGDFS** Article 117; Articles 5 paragraphs VI, VII and XV, 25, 26, 44, 46 paragraph VII, 48 and 107 of the **Forestry Act** (*Ley Forestal*) [abrogated]; and Articles 5 paragraphs XXII and XXIII, 6 paragraph XV, 8 paragraph I, 9 paragraphs I and IX, 23 paragraph II, 28 paragraph III, 29 paragraph II, 31 paragraph II, 45 paragraphs II, III and IV, 54, 58, 144 paragraphs I and III, 170, 172 and 174 paragraphs I, II, III and IV, of Jalisco's **State Ecological Balance and Environmental Protection Act** (*Ley Estatal del Equilibrio Ecológico y la Protección al Ambiente de Jalisco*—LEEEPA-Jalisco).¹⁰
10. Furthermore, the Submitters base their submission on the La Primavera Wildlife Conservation Area Management Program (*Programa de Manejo del Área de Protección de Flora y Fauna La Primavera*), the decree that created the protected natural area (*área natural protegida*—ANP) in question and an administrative decree from the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) which designated the site in question as a wildlife conservation area (*área de protección de flora y fauna*).¹¹
11. The Submitters also assert that Mexico is failing to enforce the Federal Environmental Liability Act (*Ley Federal de Responsabilidad Ambiental*—FRA), the General Human Settlements Act (*Ley General de Asentamientos Humanos*), the state of Jalisco's Sustainable Forestry Act (*Ley de Desarrollo Forestal Sustentable*), Title Twenty-five of the Federal Criminal Code (*Título Vigésimo Quinto del Código Penal Federal*) and Official Mexican Standard NOM-59-Semarnat-2010.¹²

⁹ The Submitters requested that one of their names not be divulged, in accordance with NAAEC Article 11(8) a).

¹⁰ Revised submission at 6 and 11.

¹¹ Semarnat, "Acuerdo que tiene por objeto dotar con una categoría acorde con la legislación vigente a las superficies que fueron objeto de diversas declaratorias de áreas naturales protegidas emitidas por el Ejecutivo Federal" ("Agreement to create a category, consistent with current legislation, applicable to areas decreed as protected natural areas by the Federal Government") (DOF, 7 June 2000).

¹² Official Mexican Standard NOM-059-Semarnat-2010, *Environmental protection – Native species of Mexico forest flora and fauna – Categories of risk and specifications for their inclusion, exclusion or change – List of species at risk* (DOF, 30 December 2010).

a. Article 14(1) Determination of 7 August 2015

12. In its determination of 7 August 2015, the Secretariat found that LGEEPA Articles 47 *bis*, 47 *bis* I, LGVS Article 106 and LGDFS Article 117 qualify for further analysis.¹³ The Secretariat also found that LGEEPA Article 15,¹⁴ LGVS Articles 1, 2, 4, and 5 paragraphs I and II, and LEEPA-Jalisco Article 9 paragraphs I and IX refer to general principles, purpose statements of the law in question, and policy guidelines, which guide the Secretariat analysis.¹⁵
13. In its 7 August 2015 determination, the Secretariat also concluded that LGEEPA Articles 4, 7 paragraphs VIII and IX, and 46 paragraph XI; LGVS Articles 18, 19, 47 *bis* 4 paragraphs II, III, IV and V, 60, 61, 62, 64 and 104; and Articles 5 paragraphs VI, VII and XV, 25, 26, 44, 46 paragraph VII, 48 and 107 of the Forestry Act are provisions that do not qualify for further analysis as they do not constitute environmental law in the terms of the NAAEC or are not related to an assertion in the submission.¹⁶

b. Consideration of laws cited in the revised submission

14. As previously indicated, the revised submission includes references to additional environmental provisions. Regarding the Federal Environmental Responsibility Act, the General Human Settlements Act, the state of Jalisco's Sustainable Forest Development Act and Title 25 of the Federal Criminal Code, the Secretariat will not consider these provisions in its analysis because the submission did not specifically identify assertions linked to the failure to effectively enforce these provisions.
15. Regarding Article 1 of the Constitution, cited in the revised submission, the Secretariat determines that paragraphs I, II and III provide only guidance for analysis of the submission and the further examination thereof.¹⁷ As in past determinations regarding Article 4 of the Constitution, this provision may only be considered provided that it complements analysis of other environmental law in question,¹⁸ and that such analysis centers on paragraph five, which specifically refers to the right to a healthy environment as a human right.¹⁹ Regarding Articles 8 and 17 of the Constitution do not qualify for consideration as the protection of the environment or the prevention of a human life life or health are not their primary purpose.

¹³ Article 14(1) Determination, §15.

¹⁴ The revised submission specifies paragraphs I, III, V, VII, VIII, IX, X, XI, XII and XIII of LGEEPA Article 15.

¹⁵ Article 14(1) Determination §14.

¹⁶ Article 14(1) Determination, §§ 17 and 18.

¹⁷ See SEM-15-002 (*Management of Analog TV Waste*), Article 14(1) Determination (22 September 2015), § 14.

¹⁸ See SEM-06-006 (*Los Remedios National Park*), Article 14(1) Determination (19 January 2007) at 4-5.

¹⁹ Political Constitution of the United Mexican States, Article 4, paragraph 5:

Each person has the right to a healthy environment for his/her own development and well-being. The State will guarantee that this right is respected. Environmental damage and deterioration will result in liability on the part of whoever causes such damage and deterioration as set out under the provisions of the law.

Regarding paragraph 6, which concerns the human right to water and sanitation services, this is not a matter raised in the submission. Consequently, it is not considered in the Secretariat's analysis.

i. Provisions concerning wildlife

16. The Submitters assert that the project is located in an area contiguous with La Primavera Forest. As such, —the Submitters assert— it constitutes a transition zone warranting protection as the construction of the housing development that “will seriously affect the project’s impact zone, particularly in relation to the biological corridors located therein.”²⁰ The Submitters further assert that the Mexican Government should “designate the area as a critical habitat in accordance with the criteria provided for under the law” as they consider the project’s activities “are causing critical damage in terms of the displacement and survival of various species inhabiting the area in question.”²¹
17. LGVS Article 7 establishes the concurrent jurisdiction for federal authorities, states, municipalities and the Federal District to enforce of wildlife related provisions. LGVS Articles 8, 9 and 10 establish governmental responsibilities in relation to the implementation of wildlife and wildlife habitat conservation policies at the national and state levels such as the preparation of wildlife national policies. The Secretariat believes that these provisions are consistent with the definition of environmental law set forth in Article 45(2) and therefore qualify for the submissions process. However paragraphs II, III and V to XX of LGVS Article 9 and 10 paragraphs II to XI do not bear on the submission’s assertions. Consequently, they will not be considered in future analysis by the Secretariat..
18. LGVS Article 63 establishes that is in the public interest to conserve the natural habitat of wildlife. Furthermore, it identifies the elements of habitat critical to such wildlife conservation. Consequently, this provision meets the definition of environmental law under the NAAEC and is subject to the Secretariat’ analysis. As is LGVS Article 70, which stipulates that in the event of wildlife habitat destruction, pollution, degradation, desertification or imbalance, Semarnat is authorized to implement the appropriate programs.
19. The revised submission cites LGVS Article 122 paragraphs III, IV and VII. However, these provisions do not qualify for analysis by the Secretariat, as they refer, in effect, to infractions arising from the exploitation of wildlife specimens, an issue not related to the matter raised by the Submitters.

ii. Provisions concerning citizen complaints, safety measures and enforcement of sanctions

20. The Submitters assert the existence of over 5,000 signatures on a petition against the authorization of the housing project in question, which allegedly have been filed with the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), but have not been addressed. In addition, they state that complaints have been filed with the State Attorney for Environmental Protection (*Procuraduría Estatal de Protección al Ambiente*—Proepa), the Ministry of the Environment and Territorial Development (*Secretaría de Medio Ambiente y Desarrollo*

²⁰ Revised submission at 3.

²¹ Revised submission at 8.

Territorial—Semadet), Semarnat, Civil Protection (*Protección Civil*) and the Federal Attorney General (*Procuraduría General de la República*—PGR). Furthermore, they state that over 1,500 complaints have been made to the State Human Rights Commission (*Comisión Estatal de Derechos Humanos*—CEDH). They also maintain that although the authorities of the state of Jalisco were aware of the situation raised in the submission, no state body has made any formal complaints. Furthermore, they allege that the authorities have “done nothing” to address the supposedly imminent risk and ecological imbalance that the project will bring.²² In this regard, the Secretariat found that the Submitters have collected over 16,000 signatures for a petition via the platform made available on the website <www.change.org> but that these do not constitute a citizen complaint filed before Profepa. Information documenting citizen complaints and communications of the matter to the authorities are analyzed in paragraphs 35 (*whether indicates that the matter has been communicated in writing to the relevant authorities of the Party*) and 42 (*whether private remedies have been pursued*) of this determination.

21. LGEEPA Article 189 establishes the mechanism for filing complaints in relation to facts, acts or omissions that generate or could generate ecological imbalances. LGVS Article 107 establishes the right to file complaints with Profepa regarding harm to wildlife or wildlife habitat. As for LEEPA-Jalisco Articles 170, 172 and 174, they empower the competent authorities to lodge an official complaint; they also stipulate the public’s right to file a complaint with Semadet concerning any act or omission that causes or may cause an environmental imbalance. The Secretariat has determined that provisions establishing the citizen complaint process qualify as environmental law, provided that the subject matter thereof is the protection of the environment asserted in the submission.²³
22. LEEPA-Jalisco Article 144 paragraphs I and III, which establish of emergency measures in cases of potential ecological imbalance, meet the requirements for further analysis. Consistent with previous Secretariat determinations,²⁴ these provisions qualify as environmental law. Finally, LGEEPA Article 204, which establishes the right of any interested party to obtain a technical opinion on LGEEPA infractions, may qualify as environmental law, but the submission does not explain how this is allegedly not being effectively enforced.

iii. Provisions concerning environmental impact assessment and changes in forest land use

23. The Submitters assert that no public consultations were conducted in relation to the project’s environmental impact assessment (EIA). Furthermore, they argue that the authorization enabling a change in the project’s forest land use was issued 15 years after the urban development permit, and that during the intervening period modifications have been observed on the site which had not been contemplated in said authorization.²⁵

²² Revised submission at 10.

²³ SEM-98-002 (*Ortiz Martínez*), Article 14(1) Determination (23 June 1998) at 4.

²⁴ SEM-09-001 (*Transgenic Maize in Chihuahua*), Article 14(1) Determination (6 January 2010), §17 and SEM-13-001 (*Tourism Development in the Gulf of California*), Article 14(1) Determination (24 May 2013), §51.

²⁵ Revised submission at 10-11.

The Submitters allege that the change in forest land use on the project site, which allegedly forms part of the La Primavera Forest's transition zone, was obtained in an irregular manner. Furthermore, they point out that a forest fire in March 2014 damaged nearly ten hectares and that the effects thereof are still apparent in the bark of some trees on the project site. Finally, they assert that the housing development on the selected project site compromises rainwater infiltration.²⁶

24. With respect to this assertion, Submitters cite LGEEPA Articles 34 paragraphs IV and V, and 35 paragraph III concern public consultations in relation to EIA, as well as the EIA process conducted by the competent authorities and as such, the main purpose of these provisions is the protection of the environment. The Secretariat considers that provisions on the EIA process or public consultations in relation thereto qualify as environmental law as their primary purpose is the assessment and mitigation of the negative impacts on the environment, which includes —*inter alia*—the prevention of the release of environmental contaminants and the protection of wild flora and fauna, as defined in NAAEC Article 45(2).²⁷
25. Submitters also cite LEEPA-Jalisco Articles 8 paragraph I, 28 paragraph III, 29 paragraph II, and 31 paragraph II which bear on environmental impact assessments and authorizations for housing development projects in non-urban areas, environmental impact assessments under municipal jurisdiction, land use authorizations and construction permits. All of these provisions qualify as environmental law.²⁸ A response from the Government of Mexico could clarify the jurisdictional issues in relation to these provisions.
26. Under LGDFS Article 117, a change in land use on forested acreage may only be granted “on an exceptional basis,” after a technical opinion has demonstrated that there would be no compromising of biodiversity, no soil erosion, no compromising of water quality or reduction in water infiltration. This provision stipulates that “no changes in land use shall be authorized on burnt acreage before 20 years have passed” unless the regeneration of the ecosystem has been certified. The Secretariat considers that the intent of this provision is to protect wild flora and fauna and determines that these provisions meet the definition of environmental law under the NAAEC.

iv. Provisions concerning sustainable land use

27. The Submitters assert that “no program is in effect to restore the area's ecological balance” in the wake of the damages occasioned by the ecological imbalances owing to human settlements and the fire occurred in March 2014. The Submitters argue that Semadet has not taken the appropriate actions. In particular, it has not suspended the activities of the housing development project.²⁹ LEEPA-Jalisco Article 5 paragraphs XXII and XXIII cited by the Submitters establish that it falls to the state government and the municipalities to prepare and implement programs to restore ecological balance in zones with serious imbalances, as well as to ensure observance of declarations in relation to land use, resource exploitation and pollution generating activities in the state.

²⁶ Revised submission at 4-5.

²⁷ See also: SEM-96-001 (*Cozumel*), Article 14(1) Notification (7 June 1996) at 5, and SEM-07-001 (*Minera San Xavier*), Article 14(1) Determination (4 April 2007) at 5.

²⁸ *Idem*.

²⁹ Revised submission at 9.

LEEEPA-Jalisco Article 23 paragraph II stipulates the environmental dimension in the regulation of human settlements by establishing that such regulation must seek “to correct those imbalances which deteriorate the quality of life.” LEEEP A-Jalisco Article 6 paragraph XV stipulates the suspension of activities contravening provisions bearing on ecological balance and environmental protection. All of these provisions qualify as environmental law.

v. Provisions concerning citizen participation

28. The revised submission does not explain how provisions related to promotion of public participation in wildlife conservation or in the administration and management of natural protected areas such as La Primavera Forest are not effectively enforced. Consequently, the Secretariat determines that neither LGVS Article 15 nor LGEEPA Article 47 cited in the submission qualify for further analysis.

vi. Provisions concerning administration of protected natural areas

29. The Submitters assert that the La Primavera Forest protection zone, a protected natural area under federal jurisdiction, must be upgraded; however, LEEEP A-Jalisco Articles 45 paragraphs II, III and IV, 54 and 58 are provisions that pertain to the administration of protected natural areas under state jurisdiction. As such, they are not considered in the Secretariat’s analysis.
30. In our prior Article 14(1) determination, the Secretariat found that the federal provisions applicable to ANPs—i.e., LGEEPA Articles 47 *bis*, 47 *bis* I— qualify as environmental law,³⁰ however, since the site in question is actually not part of La Primavera ANP, the Secretariat declines further review of the above mentioned provisions.

B NAAEC Article 14(1)

31. In its Article 14(1) determination dated 7 August 2015, the Secretariat found that the submission satisfies paragraphs a), b), d) and f). The Secretariat’s analysis regarding paragraphs c) and e) is presented below.

c) [Whether the submission] provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based

32. In relation to Article 14(1)(c), the submission included the following documents: the consolidated technical document, comprised of the Santa Anita Hills project’s supporting technical study and its environmental impact assessment;³¹ an opinion from the National Senate Commission on the Environment and Natural Resources (*Comisión de Medio Ambiente y Recursos Naturales del Senado de la República*) proposing a point of agreement that includes requesting proper demarcation of La Primavera Forest;³² and a proposal from a Senator with a point of agreement requesting that the Municipality of Tlajomulco de Zúñiga and the Government of Jalisco ensure that the competent authorities under their respective jurisdictions promptly resolve the social problem

³⁰ Article 14(1) Determination, §15.

³¹ GVA Desarrollos Integrales, S.A. de C.V., *Documento técnico unificado modalidad A* (Category A consolidated technical document) (10 May 2014).

³² National Senate Commission on the Environment and Natural Resources, *Propuesta de dictamen al punto de acuerdo* (Draft opinion on a point of agreement) (25 February 2013).

occasioned by the construction of the Bosque Alto subdivision in the vicinity of the La Primavera Forest ANP.³³ The submission also enclosed information on a forest fire occurred in March 2014, photographic materials, a letter to the President of Mexico and a copy of a citizen complaint.

33. The revised submission also enclosed the following documents: a copy of the authorization of a change in forest land use for the project in question;³⁴ the geographic coordinates of the “Rinconada del Palomar” draft development plan; the floral species rescue program created as a result of the Santa Anita Hills project;³⁵ and a map with the ecological characteristics of La Primavera Forest.³⁶ In relation to the La Primavera Forest ANP, the Submitters provide various documents, such as the area’s management program³⁷ and a copy of the decree that created the La Primavera Forest ANP.³⁸
34. The Secretariat determines that the revised submission contains sufficient information to allow the Secretariat its review and therefore satisfies Article 14(1) (e).

e) [Whether the submission] indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any

35. The submission enclosed copies of the correspondence sent to various authorities, including the replies thereto, where applicable. The Submitters indicate, moreover, that they collected over 16,000 signatures for a petition via the platform made available on the website <www.change.org>, which they employed to sensitize the public and the authorities regarding the matter raised in the submission.³⁹ These efforts were directed, in particular, toward the heads of Profepa and Semadet, among others. In addition, the Submitters enclosed the replies they received from Semadet⁴⁰ and the Tlajomulco de Zúñiga municipal government.⁴¹ The former informed the Submitters that it is not the

³³ National Senate, Propuesta con punto de acuerdo que propone una solicitud al gobierno municipal de Tlajomulco de Zúñiga y al gobierno del estado de Jalisco (Proposal with a point of agreement which proposes making a request to the municipal government of Tlajomulco de Zúñiga and the Government of the state of Jalisco) (15 July 2015).

³⁴ Semarnat, Jalisco Delegation, document no. SGPARN.014.02.01.01.638/15 (19 May 2015).

³⁵ Semarnat Federal Delegation in Jalisco, annex to document no. SGPARN.014.02.01.01.638/15 (19 May 2015).

³⁶ UNESCO, Map of La Primavera Forest and its ecological characteristics, <<http://goo.gl/3AQY4>> (viewed 15 November 2015).

³⁷ Semarnat, La Primavera Wildlife Conservation Area Management Program (December 2000).

³⁸ Office of the President of the Republic, “Decreto por el que por causa de utilidad pública se establece zona de protección forestal y refugio de la fauna silvestre la región conocida como La Primavera...” (“Decree establishing for reasons of eminent domain a forest protection zone and wildlife refuge in the region known as La Primavera...”) (DOF, 6 March 1980).

³⁹ Change.org, petition entitled “¡Detengan la destrucción del bosque de La Primavera!” (“Stop the destruction of La Primavera Forest!”) (undated) available at <<https://goo.gl/sUc26U>> (viewed 11 November 2015).

⁴⁰ Semadet, reply to the petition “¡Detengan la destrucción del bosque de La Primavera!” (20 July 2015), available at <<https://goo.gl/XHrqBG>> (viewed 11 November 2015).

⁴¹ Mayor’s Office of Tlajomulco de Zúñiga, reply to the petition “¡Detengan la destrucción del Bosque La Primavera!” (29 October 2015), available at <<https://goo.gl/yYzfiz>> (viewed 11 November 2015).

competent authority in this matter and the latter informed them of various legal actions undertaken to block the housing development project.

36. In addition, the revised submission enclosed the request addressed to the mayor of Tlajomulco de Zúñiga demanding the permanent suspension of the Santa Anita Hills housing development project due to its location in the transition zone of the La Primavera Forest ANP,⁴² as well as a communication to Semarnat regarding the relocation of 5,000 trees.⁴³
37. The Secretariat considers that the submission satisfies the requirement that the submitters communicate the matter to the relevant authorities of the Party.

C NAAEC Article 14(2)

38. Having determined that the submission satisfies the requirements stipulated in NAAEC Article 14(1), the Secretariat proceeds to analyze it to determine whether it warrants requesting a response from the Party in accordance with NAAEC Article 14(2) and paragraph 7.2 of the Guidelines.
 - (a) *[Whether] the submission alleges harm to the person or organization making the submission*
39. In general, the revised submission asserts that the modification of the surroundings arising from the housing development project will cause damages to the ecosystem, negatively impact surface runoff and accentuate local environmental degradation. Furthermore, the Submitters argue that the appropriate programs that would enable restoring ecological balance in La Primavera Forest transition zone, in particular on the site of the development project, are not being implemented. The Submitters allege that the urban development plan which served as the basis for the present project does not correspond to the site's present conditions and, therefore, if this project is completed, it will increase the impacts from human activities in the project area.
40. The Secretariat considers that the damages asserted in the submission are a consequence of the alleged failure to effectively enforce environmental law and, consistent with Section 7.4 of the Guidelines, finds that the submission meets this criterion.
 - (b) *[Whether] the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement*
41. The submission focuses on enforcement of environmental law in relation to a housing development project, which—it is asserted—was authorized without taking into consideration provisions pertaining to wildlife, changes in forest land-use and environmental impact. In addition, the submission argues that the project site is located in a transition zone, due to its proximity to the La Primavera Forest ANP. The Secretariat believes that submission SEM-15-001 (*La Primavera Forest*) raises matters concerning which further study in the present process would contribute to fulfilling the

⁴² Request from the Santa Anita Condominium Council's chairman/owner addressed to the mayor of Tlajomulco de Zúñiga (5 October 2015).

⁴³ Letter to the Minister of the Environment and Natural Resources informing him of the plans to "relocate" 5,000 trees (19 August 2015).

NAAEC's aims, specifically those stipulated in subparagraphs a), b), c), f), g) y h) of NAAEC Article 1.⁴⁴

(c) [Whether] private remedies available under the Party's law have been pursued

42. The submission includes a copy of the citizen complaint of 27 October 2015, filed with Profepa's Jalisco delegation, which bears on the facts raised in the submission, as well as a copy of the complaint of 26 October 2015, filed with the Jalisco Human Rights Commission, in which it is asserted that construction of the housing development in question violates the right to a healthy environment. Moreover, the submission contains a communiqué detailing the legal actions that the Tlajomulco de Zúñiga municipal government intends to undertake.
43. The submission also contains various citizen complaints filed with the Profepa's Jalisco delegation regarding the project in question and the installation of hurricane wire mesh in Tlajomulco de Zúñiga, prior to the project's authorization.⁴⁵ Furthermore, the submission enclosed the state Proepa's response, in which said body declared its lack of jurisdiction to respond to a petition demanding the halting of the Bosque Alto subdivision project.⁴⁶ Also included are Profepa's responses to various complaints citing the alleged cutting of over a thousand trees, groundwater pollution and impacts on the biological corridors of La Primavera Forest. In one of these responses, Profepa suggests that the appropriate action is to direct the complaint to the Natural Resources Inspection Unit (*Subdelegación de Inspección de Recursos Naturales*),⁴⁷ and in another response, Profepa directs the complaints to said inspection unit and requests that Semarnat disclose the environmental impact assessments it deems relevant as regards the conditions demonstrating the exceptional circumstances justifying the change in forest land use required to develop Santa Anita Hills.⁴⁸

⁴⁴ "The objectives of this Agreement are to:

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
- (c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;
- (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- (g) enhance compliance with, and enforcement of, environmental laws and regulations;
- (h) promote transparency and public participation in the development of environmental laws, regulations and policies;

⁴⁵ Complaint filed with Profepa, Jalisco Delegation, concerning a subdivision in the La Primavera Forest area (28 May and 9 June 2015); citizen complaint filed with Proepa with respect to the installation of hurricane wire mesh in Tlajomulco de Zúñiga (1 October 2015).

⁴⁶ Semadet, reply to a petition addressed to the head of Proepa in order to block the construction of the "Bosque Alto" subdivision (20 July 2015).

⁴⁷ Profepa, Jalisco Delegation, reply to a citizen complaint, explaining that the complaint should be directed to the Natural Resources Inspection Unit (*Subdelegación de Inspección de Recursos Naturales*) (2 June 2015).

⁴⁸ Profepa, Jalisco Delegation, reply to a citizen complaint (9 October 2015).

44. The Secretariat finds that, in light of paragraph 7.5 of the Guidelines, the request of a Response from the Government of Mexico will not duplicate or interfere with processing of complaints by the Submitters. The Secretariat considers that reasonable efforts have been conducted in filing citizen complaints before Profepa.
45. A response from the Government of Mexico could shed light on the remedies sought in relation to the housing development project as well as, in any case, the current status of said actions. The Secretariat finds that the submission meets this criterion.

(d) [Whether] the submission is drawn exclusively from mass media reports

46. Concerning Article 14(2)(d), the Secretariat believes the submission is not based on mass media reports but rather on the facts presented by the Submitters, as is evident upon consultation of the information presented in the annexes of the submission's original and revised versions.

III. DETERMINATION

47. For the reasons detailed herein, the Secretariat finds that submission SEM-15-001 (*La Primavera Forest*) satisfies the admissibility requirements stipulated in NAAEC Article 14(1) and further finds, in light of Article 14(2), that it warrants a response from the Government of Mexico regarding the submission's assertions on the effective enforcement of the following provisions:
 - i. in relation to wildlife law enforcement, LGVS Articles 7, 8, 9 paragraphs I, IV and XXI, 10 paragraph I, 63 and 70;
 - ii. regarding provisions related to citizen complaints, safety measures and enforcement of sanctions, LGVSA Article 107; LGEEPA Article 189; and LEEPA-Jalisco Articles 144 paragraphs I and III, 170, 172 and 174;
 - iii. concerning environmental impact assessment and changes in forest land use, LGDFS Article 117; LGEEPA Articles 34 paragraphs IV and V, and 35 paragraph III; LEEPA-Jalisco Articles 8 paragraph I, 28 paragraph III, 29 paragraph II, and 31 paragraph II; and
 - iv. regarding sustainable land use, LEEPA-Jalisco Articles 5 paragraphs XXII and XXIII, 6 paragraph XV, and 23 paragraph II.
48. Furthermore, the response from the government of Mexico may address any actions from the authorities to expand the area of protection for the La Primavera Forest Natural Protected Area, which is one of the Submitter's central concerns. A response may also inform whether there has been enforcement actions as a result of the citizen complaints filed with respect to the matter raised in the submission.
49. Pursuant to NAAEC Article 14(3), the Party may provide a response to the submission within 30 (thirty) working days of receipt of the present determination, i.e., by **7 March 2016**. In exceptional circumstances, the Party may notify the Secretariat in writing that it is extending the deadline to 60 (sixty) working days from the date of the present determination, i.e., until **21 April 2016**.

Secretariat of the Commission for Environmental Cooperation

(signature in original)
Per: Robert Moyer
Director, Submissions on Enforcement Matters Unit

(signature in original)
Per: Paolo Solano
Legal Officer, Submissions on Enforcement Matters Unit

cc: Enrique Lendo, Alternate Representative of Mexico
Louise Métivier, Alternate Representative of Canada
Jane Nishida, Interim Alternate Representative of the United States
César Rafael Chávez, Executive Director, CEC Secretariat
Submitters