

**Reasons for Council Instructions to the Secretariat
Not to Prepare a Factual Record Regarding Submission
SEM-15-001 (*La Primavera Forest*)**

Pursuant to its commitment to transparency and in its capacity as the governing body of the Commission for Environmental Cooperation responsible for overseeing the implementation of the *North American Agreement on Environmental Cooperation* (“NAAEC”), the Council of the Commission for Environmental Cooperation (the “Council”) hereby makes public its reasons for the instructions to the Secretariat not to prepare a factual record regarding SEM-15-001 (*La Primavera Forest*).

1. The Secretariat’s Article 15(1) Notification

In its Article 15(1) Notification, issued on 4 November 2016, the Secretariat notified the Council that the development of a factual record was warranted regarding the Submitters’ assertions of an alleged failure to effectively enforce Article 5, sections XXII and XXIII; and Article 23, section II, of the Jalisco Ecological Balance and Environmental Protection Act (*Ley Estatal del Equilibrio Ecológico y la Protección al Ambiente de Jalisco—LEEEPA-Jalisco*) in connection with the formulation and implementation of plans and programs for the restoration of ecological stability and monitoring the observance of declarations to regulate land-use changes, use of resources, and polluting activities in areas adjacent to the La Primavera Forest.

2. The Council’s Instruction to the Secretariat

In the attached Council Resolution 17-01, the Council unanimously instructed the Secretariat not to prepare a factual record regarding SEM-15-001. Pursuant to Guideline 10.4 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, the Council hereby offers its reasoning for this instruction.

A. Article 5, sections XXII and XXIII, of the LEEEPA-Jalisco

The Council notes that in its Party Response to the Submitters’ allegations related to Article 5, sections XXII and XXIII, Mexico explained how these provisions do not apply to the Santa Anita Hills Housing Development Project, given that the determination of restoration activities to be carried out at the project site is reserved to the federal government rather than the State or local authorities of Jalisco, pursuant to Article 28, Section VII, of Mexico’s General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*) (see pages 18-19 of the Party Response). In its Party Response (see pages 7, 13, 15, and 16), Mexico states that the federal authorization of land-use change in forest land (*cambio de uso de terrenos forestales—CUSF*) specifically deals with restoration activities and conditions that must be implemented by the developers of the Project and that address the Submitters’ concerns, including those related to the felling of trees.

The Council also notes that, as explained by the Government of Mexico in its Party Response (see page 19), the development of the Project has not yet started and thus there is no requirement for restoration activities to be implemented at the site. Furthermore, the Council is of the view that in its Party Response, the Government of Mexico provided relevant information on its actions regarding the effective enforcement of Article 5, sections XXII and XXIII, of the LEEEPA-Jalisco, to the extent they are applicable to the project site as raised by the Submitters.

Finally, the Council notes that the Submitters' concerns regarding the lack of a restoration program appear to be limited to the project site and are not focused on the regulation of land use changes, use of natural resources or polluting activities in areas adjacent to the La Primavera Forest beyond the project site as raised by the Submitters. As explained above, the Government of Mexico adequately provided information in its Party Response concerning restoration requirements at the Project site.

For the above-stated reasons, the Council considers that the development of a factual record with respect to this provision is not warranted.

B. Article 23, section II, of the LEEEPA-Jalisco

The Council notes that Article 23 of the LEEEPA-Jalisco establishes that government agencies overseeing urban development must observe specified environmental criteria, including the objective in section II to correct environmental imbalances, and foresee and direct the growth tendencies of human settlements to maintain a satisfactory balance between existing natural resources and population through the observance of local development plans in the determination of land use.

The Council observes that the Submission's allegations appear to focus on the lack of formulation of a restoration plan, rather than the content of Article 23, section II, in relation to the non-observance of local development plans related to the project. Moreover, the Council is of the view that in its Party Response, the Government of Mexico provided relevant information on its actions regarding the effective enforcement of Article 23, section II, of the LEEEPA-Jalisco—that is, how the CUSF complies with the local development plans applicable to the project site.

The Council, therefore, considers that the development of a factual record with respect to this provision is not warranted.