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**Party Response of the United Mexican
States**

**Submission SEM-19-002
(City Park Project)**

**Submitted to the Secretariat of the Commission for
Environmental Cooperation in accordance with Article 14(3) of
the North American Agreement on Environmental Cooperation**

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I. INTRODUCTION

On 16 April 2019, the organization Acción Colectiva Socioambiental, A.C. (the "Submitter") filed a submission with the Secretariat of the Commission for Environmental Cooperation (the "Secretariat") in accordance with Article 14(1) of the North American Agreement on Environmental Cooperation (NAAEC). The Submitter asserts that Mexico is failing to effectively enforce the environmental law applicable to environmental impact approval in connection with the "City Park" project, a high-density service and business development coupled with an indeterminate-density residential (hotel and private residence) development in the municipality of León, Guanajuato.¹

The Submitter contends in submission SEM-19-002 (City Park Project) that the municipal authorities of León, Guanajuato failed to effectively enforce the relevant provisions relating to the environmental impact assessment and approval of the "City Park" project, a high-density service and business development coupled with an indeterminate-density residential (hotel and private residence) development in the city of León, Guanajuato.²

The Submitter further asserts that while Articles 1 paragraph II and 5 paragraph XVI of the municipal bylaw establish provisions governing environmental impact assessment (EIA)³, the rules governing the distribution of jurisdiction set out in the Mexican Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) and the Guanajuato State Environmental Protection Act (*Ley para la Protección y Preservación del Ambiente del Estado de Guanajuato*—LPPAEG) do not give the municipal authorities the corresponding powers and that in any case, these authorities may participate in the EIA but not approve it, since the latter power is held exclusively by the federal government and the states.⁴

Similarly, the Submitter contends that the municipal government of León, Guanajuato failed to enforce the environmental law as follows:

1. The municipal authorities of León, Guanajuato are failing to effectively enforce the relevant environmental impact provisions, since the Environmental Management Department (*Dirección General*

¹ Secretariat of the Commission for Environmental Cooperation, SEM-19-002 (City Park Project), Article 14(1) and (2) Determination, at ¶2, online at http://www.cec.org/sites/default/files/submissions/2016_2020/18-det_14_1_2_es.pdf (viewed February 2020).

² *Ibid.* at ¶3.

³ **LGEEPA Article 28.** Environmental impact assessment is the procedure whereby the Ministry establishes the conditions governing the performance of works and activities that may cause ecological instability or exceed the limits and conditions set out in the applicable provisions for environmental protection and for ecosystem preservation and restoration, with a view to preventing or minimizing their negative impact on the environment.

⁴ SEM-19-002 (City Park Project, Article 14(1) and (2) Determination, ¶3.

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de Gestión Ambiental–DGGA) of the municipality of León, Guanajuato was not the authority competent to receive, process, and rule on the EIA procedure; in addition, the Submitter contends that the following irregularities occurred during this procedure:

- A. The modality of the environmental impact statement (EIS)⁵ determined by the Environmental Regulation Division (*Dirección de Regulación Ambiental–DRA*) of the municipality of León “does not correspond to the environmental impact that the project’s works or activities may potentially cause.”
- B. The DRA acted outside of the procedure established by the environmental impact legislation.
- C. The DGGA “did not follow the proper procedure in relation to the conduct of the EIA,” and... [sic]

2. The Submitter asserts that the developer did not obtain proper approval for its “Management plan for four priority species listed in NOM-059-Semarnat-2010, ‘Environmental protection–Mexican native species of wild flora and fauna–Risk classes and specifications for inclusion, exclusion, or change–List of species at risk’ (NOM-059-Semarnat-2010), ensuing from the City Park project” (hereinafter, the “Priority Species Management Plan”).

On 5 July 2019, the Secretariat, further to its review of submission SEM-19-002 (City Park Project) with respect to the eligibility requirements of NAAEC Article 14(1) and pursuant to Article 14(2), issued a determination on the eligibility of the submission.

In its determination, the Secretariat found that the following provisions qualify as environmental law:

- A. LGEEPA Articles 4, 5 paragraph X, 6, 7 paragraph XVI, and 8 paragraph XVI, and LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I in relation to whether the DGGA of the municipality of León, Guanajuato is competent to issue environmental impact approval for the City Park project.
- B. LGEEPA Article 30, Articles 10 and 11 paragraph IV of the Environmental Impact Regulation to the LGEEPA (REIA), LPPAEG Article 31, and Articles 19, 20, 21, 25, and 27 of the Environmental Assessment Regulation to the LPPAEG (REIA–Guanajuato) with respect to the EIA modality applicable to the City Park project.

⁵ **LGEEPA Article 3.** For the purposes of this Act, the following definitions shall apply:…
XXI. Environmental impact statement: the document giving notice, based on studies, of the significant and potential environmental impact that would be caused by a work or activity, as well as the manner in which to avoid or mitigate such impact where it is negative.”

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- C. Articles 104, 105, and 120 of the Environmental Management Bylaw (*Reglamento de Gestión Ambiental de León-RGA-León*) as regards the procedure followed during the environmental impact assessment procedure.

- D. Article 9 paragraph XIII of the Mexican Wildlife Act (*Ley General de Vida Silvestre-LGVS*) and Article 32 paragraph VI of the Internal Regulation of the Ministry of the Environment and Natural Resources (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales-RI-Semarnat*), as well as NOM-059-Semarnat-2010, in connection with the approval of the Priority Species Management Plan.

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II. GENERAL ISSUES

a. Standing of the Submitter

In regard to the standing of the Submitter, and as the Secretariat found, the Submitter meets the requirements of NAAEC Article 14(1), which stipulates that the Secretariat may only "consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law," in that the Submitter is a civic association incorporated in accordance with the laws of Mexico and established in the city of León, Guanajuato.⁶

b. Environmental law

Among the legal provisions asserted to have been violated are articles of the LGEEPA, the LPPAEG, the REIA, the REIA-Guanajuato, the RGA-León, and NOM-059-Semarnat-2010, which all constitute environmental law under paragraph 5.1 of the *Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*.

c) Environmental harm

Some of these provisions establish generic powers and obligations with a view to establishing the jurisdictional regime governing environmental impact assessment and approval, for the purpose of establishing coordination mechanisms among the federal government, the states, and the municipalities to ensure that projects proposed for a given jurisdiction do not affect the environment, life, or human health.

These legal provisions establish a mechanism for assessing the possible environmental harms generated by a work or activity and imposing a set of measures to mitigate or prevent these harms. The failure to enforce these *ipso facto* generates responsibility on the part of the authority; that is, the failure, when issuing environmental impact approval, to respect the division of jurisdiction or the procedure established by the applicable environmental law could lead to harm, since various measures with potential environmental impacts could be approved without having been properly assessed. According to the principles of prevention and precaution, works or activities that generate environmental impacts should only be approved⁷ once there is full certainty of

⁶ Submission of 16 April 2019, at 1, online at http://www.cec.org/sites/default/files/submissions/2016_2020/01-sub_peticion.pdf

⁷ LGEEPA Article 3. For the purposes of this Act, the following definitions shall apply:... XX. "Environmental impact: the alteration of the environment by the action of human beings or nature"; online at http://www.diputados.gob.mx/LeyesBiblio/pdf/148_050618.pdf.

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their potential impacts and the measures necessary to prevent or minimize such harms are established.⁸

Thus, even where there is no specific harm, this is an obligation implying objective responsibility, and the mere demonstration of failure to adhere to the EIA procedure can be considered an environmental harm in and of itself; therefore the eligibility requirement is considered to have been met. In addition, the submission is aimed at promoting enforcement of the above-mentioned environmental law with a view to safeguarding the community's right to a healthy environment rather than at harassing industry.

d) Pending administrative remedies

[...] Information confidential at Party's request under Article 113, paragraph XI of Mexico's General Law on Transparency and Access to Public Information (Ley General de Transparencia y Acceso a la Información Pública).

⁸ Tesis I.3°.A.17 A (10ª.), Décima Época, Book 29, April 2026 (sic), Vol. III, Gaceta del Semanario Judicial de la Federación, at 2507.

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III. ANALYSIS OF SECRETARIAT'S DETERMINATION

This section presents an analysis of each legal provision in regard to which the Secretariat requested a response from the Government of Mexico after determining that these provisions were likely the object of enforcement failures. Additionally, this section presents an analysis of the documents gathered by the Government of Mexico in preparing this response, including those it received from Profepa in file no. PFPA/5.3/2C.28.5.1/10653 in relation to the EIA procedure for environmental impact statement no. MIA-MG-506-2017 relating to the City Park project, which was processed by the DGGa of the municipality of León.

a) Jurisdiction over the environmental impact assessment procedure

The Secretariat found that only the potential violations of LGEEPA Articles 4, 5 paragraph X, 6, 7 paragraph XVI, and 8 paragraph XVI qualify for review. These establish the division of powers among the federal, state, and municipal authorities with respect to EIA.⁹ In relation to the alleged violation of LGEEPA Article 28, the Secretariat found that while it does qualify as environmental law, it does not relate to the assertions concerning the authority's jurisdiction nor to the modality of the EIS, and is therefore not considered environmental law.¹⁰

To obtain greater clarity on the content of LGEEPA Articles 4, 5 paragraph X, 6, 7 paragraph XVI, and 8 paragraph XVI, they are transcribed below. However, we also transcribe LGEEPA Article 8 paragraph IV, since even though it was not considered by the Secretariat, the Party' view is that it is this provision that establishes environmental impact-related powers and not paragraph VI [sic], which relates to the climate change mitigation and adaptation measures that are to be formulated and implemented in municipalities.

Mexican Environmental Protection Act

Article 4. The Federation, the federative entities, the municipalities and the territorial demarcations of Mexico City shall exercise their powers with respect to the preservation and restoration of ecological equilibrium and environmental protection, pursuant to the distribution of jurisdiction set out in this Act and other legal provisions.

The distribution of jurisdiction with respect to the regulation of sustainable development, and of the protection and

⁹ SEM-19-002 (City Park Project), Article 14(1) and 14(2) Determination, at ¶19, online at http://www.cec.org/sites/default/files/submissions/2016_2020/18-det_14_1_2_en.pdf (viewed February 2020).

¹⁰ *Ibid.*

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preservation of forest resources and soil, shall be determined by the General Sustainable Forestry Development Act.

Article 5. The following are powers of the Federation:...

X. environmental impact assessment of the works or activities to which Article 28 of this Act refers and, as applicable, the issuance of the corresponding approvals;

Article 6. The powers granted by this Act to the Federation, except those reserved to the President of the Republic by express provision of this Act, shall be exercised by the Federal Executive Branch through the Ministry and, as applicable, the ministries of National Defense and of the Navy may collaborate with the Ministry where it sees fit due to the nature and gravity of the problem.

Article 7. The following are powers of the states, pursuant to the provisions of this Act and the applicable local laws:...

XVI. environmental impact assessment of those works or activities not expressly reserved to the Federation by this Act and, as applicable, the issuance of the corresponding approvals, as prescribed by the provisions of Article 35 BIS 2 of this Act;

Article 8. The following are powers of the municipalities, pursuant to the provisions of this Act and the applicable local laws:...

XIV. participation in the environmental impact assessment of works or activities under state jurisdiction, where such works or activities take place within the scope of their territorial jurisdiction;...

~~**XVI.** the formulation and execution of climate change mitigation and adaptation measures.~~

The analysis of LGEEPA Article 4 shows that it is the fundamental provision on which the division of powers among the federal government, the federative entities, and the municipalities in regard to preservation of ecological equilibrium and protection of the environment is based. Thus, to determine whether there has been a failure to enforce it, it must be analyzed with reference to other provisions regulating specific EIA-related powers, in order to determine whether the division of jurisdiction established by this provision was observed.

As to LGEEPA Articles 5 paragraph X and 6, their primary purpose is to regulate the EIA-related powers of the Federation. As mentioned earlier, this response does not address matters related to possible violations of the EIA procedure at the federal level, since this is the subject of various pending administrative and judicial proceedings concerning whether the national park adjacent to City Park does or does not constitute a wetland; in the former

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case, the EIA procedure should, pursuant to LGEEPA Article 28 paragraph X, have been processed by Semarnat.

Consequently, we shall not enter into an analysis of possible violations relating to the federally regulated EIA procedure until these proceedings have been definitively resolved.

Concerning the violation of LGEEPA Articles 7 paragraph XVI and 8 paragraph XVI, the primary purpose of these provisions is to regulate the environmental impact-related powers of the states and the municipalities; these provisions will be analyzed in conjunction with LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I, which also govern various matters relating to the EIA procedure in the state of Guanajuato, in order to ascertain whether any violation occurred during the EIA procedure.

Concerning these latter articles, the Secretariat retained for review only Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I, which make the state authority competent to assess environmental impact and allow the municipal councils to participate in this procedure.¹¹ As to the remaining provisions asserted by the Submitter to have been violated, the Secretariat found that they do not qualify for review since they do not relate to the matter raised in the submission.¹²

For greater clarity, the articles for which the Secretariat determined the potential existence of enforcement failures are transcribed as follows:

Guanajuato State Environmental Protection Act

Article 6. The state executive is competent:...

XVI. to assess the environmental impact of works or activities whose assessment is not expressly reserved to the Federation and, as applicable, to issue the corresponding approvals;

Article 7. The municipal councils are competent:...

XVII. to participate in the environmental impact assessment of works or activities under state jurisdiction where such works or activities take place within the scope of their territorial jurisdiction, in the manner prescribed by this Act and its regulation;

Article 8. The State Institute of Ecology is hereby constituted as a decentralized public body of the state public administration, with its own legal existence and funding, and shall have the following powers:

¹¹ SEM-19-002 (City Park Project) at ¶19.

¹² *Ibid.*

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I. to assess any environmental impact that may be caused by public or private works or activities whose assessment is not reserved to the Federation and to issue the corresponding decision;

It may be noted that pursuant to LPPAEG Article 7 paragraph XVII, a municipal council may participate in the EIA of works or activities under state jurisdiction where they take place within the bounds of the municipality's territorial jurisdiction. Meanwhile, the second paragraph of Article 29 provides that in a municipality, the municipal council shall determine the agency or entity of the municipal public administration that is competent to issue environmental impact approval for the works and activities to which Article 44 refers.

From the foregoing it is evident that the DGGA of the municipality of León possessed the powers to assess environmental impact and issue approval in some instances; however, the power granted by the LPPAEG to the municipalities solely and exclusively applies to the works and activities contemplated by LPPAEG Article 44, which provides as follows:

Guanajuato State Environmental Protection Act

Article 44. The municipal authority is competent to issue environmental impact approval in the following cases:

I. works or activities reserved to the Federation or the state but decentralized to the municipality;

II. those established by municipal environmental bylaws;

III. works or activities intended to be carried out within protected natural areas under municipal jurisdiction;

IV. maintenance and repair work on municipal roads, and the construction of rural roads;

V. residential developments intended to be built within the population centre;

VI. public markets;

VII. mining of minerals or substances not reserved to the Federation that constitute deposits similar to the components of agricultural land for the manufacture of construction or decoration materials;

VIII. nonhazardous waste management facilities, and

IX. microindustrial facilities in those sectors contemplated in the regulation where, due to their characteristics and purpose, they entail risk to the environment.

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In such cases, the environmental impact assessment may take place within the context of any procedures regarding authorization of land use, construction, subdivision, and similar procedures prescribed by municipal bylaws and provisions flowing from them.

Such provisions shall prescribe whatever is necessary to render the environmental policy compatible with the urban development policy and prevent unnecessary duplication of the relevant administrative proceedings.

It is evident from the transcribed provisions that the right of participation granted to municipalities is limited to those works and activities that are contemplated in Article 44. It may therefore be concluded that the municipality's jurisdiction over the EIA procedure is not unlimited, and only applies to the activities contemplated in the article in question.

It may be further noted that the EIA procedure for the City Park project did not fall under any of the categories established by LPPAEG Article 44, nor meet any of the following conditions set out in RGA-León Article 87 under which environmental impact approval by the Federation and the states is not required:

Environmental Management Bylaw for the Municipality of León, Guanajuato

Article 87. Where they do not require environmental impact approval by the federal or state authorities, the following works or activities require prior environmental impact approval by the DGGA:

I. Any work or activity to which the corresponding agreements refer and whose assessment is subject to those applicable federal or state legal provisions which, although reserved to the Federation or the state of Guanajuato, are decentralized to the municipality;...

II. Those established by municipal environmental bylaw:

a) telecommunications antennas; cell towers; gas or service stations and fueling stations; second-hand markets; mausoleums, cemeteries and crematoria, and any bank or site for the mining or exploitation of earth or compost;

b) repealed;

c) discotheques, bars, cantinas, clubs, restaurant-bars, electronic or table game parlors without betting, billiard and pool rooms, servi-bars, nightclubs, and other establishments where the sale or consumption of alcoholic beverages by the glass or in open containers is permitted and having a total area greater than or equal to 800 square metres;

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d) hotels, motels, and hostels with twenty or more rooms as well as those which, irrespective of the number of rooms, have a total area greater than or equal to 1200 square metres;

e) movie theatres, concert halls, show venues, temples and other centres of public worship, seminaries, convents, party or multi-use venues, and hospitals or other health or medical care centres with a total area greater than or equal to 1600 square metres;

f) office buildings or suites, shopping plazas or centres, and any building owned as a condominium with ten or more offices, rooms, or private units, as well as those which, irrespective of the number of offices, rooms, or private units, have a total area greater than or equal to 1600 square metres;

g) high school, vocational, or undergraduate centres or institutions; polytechnic or technological institutes, universities; research or postgraduate study centres; bank or financial institution branches, currency exchange establishments, and pawnshops; radio or television stations; cinema studios; distributors or lots for the purchase/sale or lease of any class of motor vehicles; public or private parking facilities; auto mechanic and auto body shops, and any establishment or facility where motor vehicles or their parts are stored, deposited, or repaired, with a total area greater than or equal to 2400 square metres;

h) cafeterias, restaurants, and food and beverage stores where no alcoholic beverages are sold or consumed; department and self-service stores; grocery stores, convenience stores, corner stores, and commercial stalls; pet stores, and stores selling wine and/or alcoholic beverages in closed containers, with a total area greater than or equal to 3200 square metres;

i) basic education centres or institutions, kindergartens, and daycare or child care centres; nursing homes; nursery schools; social assistance centres or institutions; vocational training academies or institutes; fair or exhibition grounds; art galleries, theatres, and museums; community centres, gymnasiums, sports fields or units and any other facility for the practice or teaching of any sport; mills; bakeries; bulk grain or seed stores; pharmacies and drug stores; tailor shops; photographic studios; veterinary offices; post and telegraph agencies, and telephone services offering public phone booths, with a total area greater than or equal to 4000 square metres;

j) warehouses and storage facilities; establishments for the sale or purchase of construction materials; motor vehicle inspection centres; libraries; funeral parlors; urban and intercity public transit terminals or stations; telephone services without public booths, and nurseries, greenhouses, and hydroponic or biotechnological growing facilities, with a total area greater than or equal to 8000 square metres;

k) stables or barns, pigsties, pastures, and any other livestock or agroindustrial production unit, whether individual or

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collective, with a total area greater than or equal to 10 hectares;

l) any commercial or service establishment, whether public or private, other than those mentioned in the preceding paragraphs, that has a total area greater than or equal to 1600 square metres or requires 80 or more parking spaces, pursuant to the applicable urban development or zoning provisions;

m) any civil installation or work, whether public or private, other than those mentioned in the preceding paragraphs, that involves the cutting, removal, or transplanting of 20 or more trees or palms;

n) any project that includes any of the works or activities mentioned in the preceding paragraphs, and

o) any other work or activity that is situated within any of the population centres of the municipality and may cause any significant, synergistic, or cumulative environmental impact as defined by the applicable legal provisions.

III. Any work or activity intended to be carried out in protected natural areas under municipal jurisdiction or urban green spaces, with the exception of those that are essential to their conservation, maintenance, improvement, reforestation, or monitoring as well as for the infrastructure of urban green spaces, where no foundation or other civil work is required.

IV. Maintenance and repair work on municipal roads, and rural roadbuilding:

a) extension or modification of the cross-section or route of any urban road, and the laying or replacement of pavement or any other road surface, where it is anticipated that 10 or more trees or palms will be affected or where the work covers an area greater than or equal to 800 square metres;

b) building and opening of any rural road on land not considered forested, with a cross-section greater than or equal to five linear metres and a length greater than or equal to 2000 linear metres, as well as those which, irrespective of cross-section or length, entail the cutting or filling of slopes or will affect 20 or more trees;

c) extension or modification of the cross-section or route of any rural road on land not considered forested that entails the cutting or filling of slopes or will affect 20 or more trees or palms, or that covers an area greater than or equal to 800 square metres, and

d) the installation, extension, and/or structural modification of bridges or tunnels, bicycle paths, public transit stops, or any other item of urban infrastructure on any existing public road that entails the cutting of 10 or more trees or palms or covers an area greater than or equal to 800 square metres.

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V. Residential developments intended to be situated within the population centre:

a) any project for the residential development of a property in which part of the route of one or more urban roads is required in order to build lots, as well as the performance of urban development work for the purpose of selling the resulting lots under any property regime contemplated in the Civil Code of the State of Guanajuato, and

b) any project for the residential development of a property, as well as the building or modification of a structure or group of structures in vertical, horizontal, or mixed form and containing at least 24 units of private property, for any transfer of real rights, in which there exist indivisible elements in common use.

VI. The construction of any market situated within any of the population centres of the municipality and having a total area greater than or equal to 4000 square metres.

VII. Any bank or site for the mining or exploitation of clay or any other substance or material similar in nature to the components of agricultural land, with a total area greater than or equal to 1500 square metres.

VIII. Nonhazardous waste management facilities:

a) establishments devoted to the temporary storage, treatment, or recycling of urban solid waste, from third parties, or generated in establishments not having the same domicile as their own;

b) urban solid waste stockpiling centres, with the exception of any school- or community centre-based facilities set up pursuant to this bylaw, and

c) establishments devoted to the purchase and sale of reusable wastes or recyclable materials different from those contemplated in the preceding paragraph.

IX. Microindustrial facilities, where, due to their characteristics and purpose, they entail risk to the environment:

a) establishments with up to 10 employees engaged in the chrome-plating of metal parts as well as the manufacture of auto parts, dies, molds, or any other metal product, where no smelting of any material takes place during the process;

b) establishments with up to 10 employees engaged in the tanning and finishing of hides or the manufacture of shoes or of items made of leather or skin, as well as the production or use of tallow;

c) establishments with up to 10 employees engaged in the manufacture of ice, the purification or packing of drinking

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water, or the production or packing of drinks, carbonated beverages, or alcoholic beverages;

d) establishments with up to 10 employees engaged in the manufacturing, repair, or refurbishing of all types of furniture, including built-in furniture, that have a total area greater than or equal to 1600 square metres;

e) clinical testing laboratories and laboratories where any industrial process is carried out, with up to 10 employees, and

f) turning and milling shops; auto body repair shops; smithies; print shops; carpentry and woodworking shops, and shops for the repair of all types of motor vehicles, with up to 10 employees and a total area greater than or equal to 800 square metres.

Similarly, a review with reference to RGA-León Article 87 of the works and activities to be carried out as part of the City Park project does not show that the DGGGA has the specific power to assess and approve the environmental impacts of the project developed by the corporation called MRP CKD, S. de R.L. de C.V., a corporation representing CI BANCO, Sociedad Anónima de Institución de Banca Múltiple.

To clarify, the following paragraphs describe the process followed by the developer:

On 6 December 2016, the legal representative of the corporation called MRP CKD, S. de R.L. de C.V., a corporation representing CI BANCO, Sociedad Anónima de Institución de Banca Múltiple, the trustee of the irrevocable administrative trust with right of review, identified with number 2467 and for tax purposes identified as trust no. MRP LEÓN CIB/2467, notified in writing the Technical Division of the Guanajuato Local Branch of the National Waters Commission of the purchase and sale of the rural lot called "San Nicolás del Palote," which had an area of 60,504.32 m² and was situated on the south side of Avenida Morelos at number 1555. It further notified said authority that it intended to build a real estate development and that the lot abutted Los Cárcamos Park along two sides, to the south for a length of 325.11 m and to the west for 48.97 m, and that to this end it was requesting information from the Urban Development Department (*Dirección de Desarrollo Urbano*) of the municipality of León, Guanajuato as to whether the body of water called Los Cárcamos Park was national property under the responsibility of Conagua.

[...] Confidential Information at Party's request under Article 113, paragraph XI of Mexico's General Law on Transparency and Access to Public Information (Ley General de Transparencia y Acceso a la Información Pública).

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On 31 March 2017, the DGGGA received a letter whereby the legal representative of trust no. MRP León CIB/2467 requested assignment of the applicable modality of the environmental impact statement to the City Park project, which the developer planned to build at Boulevard José María Morelos 1555, near the intersection with Boulevard Adolfo López Mateos, Colonia El Rosario, León, Guanajuato, which would comprise the construction of commercial space including department stores, movie theatres, and a gym as well as an office tower, a hotel, residential towers, and three basement levels.

On 12 April 2017, in file no. DGGGA-DRA-310-2017, the DGGGA of the municipality of León issued a response to the request, stating that the developer was required, prior to commencement of the work, to submit to the DRA the general modality of the environmental impact statement.

Similarly, a review of the works and activities to be carried out as part of the City Park project with reference to RGA-León Article 87 does not show that the DGGGA has the specific power to assess and approve the environmental impacts of the project developed by the corporation called MRP CKD, S. de R.L. de C.V., a corporation representing CI BANCO, Sociedad Anónima de Institución de Banca Múltiple.

Paragraph II of the summary of the EIS for the first phase of the City Park project, containing a brief description of the work or activity in question, states that it is a mixed-use project and that the first phase and object of study has an area of 27,449.39 m² made up of business, entertainment, restaurants, residents, and a hotel, with an additional area of 2,349.60 m² for access and materials yard.¹³

A breakdown of the internal areas of the first phase of the City Park project is presented.

Item	Area (m ²)
Retail (services, stairs and escalators, food court)	10,012.11
Commercial traffic/walkways	8,374.00
Offices (lobby)	336.48
Residences (lobby)	244.46
Hotel A (Lobby)	191.29
Parking/vehicle traffic/sidewalks	5,716.04
Green space	2,574.98
Total	27,449.39

Figure 1

The facilities to be built as part of the project consist of a shopping centre including movie theatres, boutiques, supermarkets, mid-sized anchor stores, and commercial space; a 20-story

¹⁶ SEM-19-002 (City Park Project) at ¶21.

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residential tower with 156 apartments; a 16-story office tower, and a 16-story five-star hotel with 199 rooms.¹⁴

In the EIS submitted to the DGGA, the conclusion to the impact analysis indicates that the impact assessment performed using the matrix methodology had determined the environmental impacts that would be caused by the activities associated with the project, including the preliminary phases, the site preparation phase, construction, operation, maintenance, and site abandonment.

[See Appendix 6.]

Among the impacts identified were the following:

- It was found that at the preliminary phase, 15 activities would cause IRRELEVANT impacts; 20 activities would cause MODERATE impact (impact on air quality caused by dust and exhaust gases generated by motor vehicles and heavy machinery, increased noise levels, modified relief and topography, increased erosive processes, etc.), and 2 are SEVERE (factors affected are loss of vegetation cover and loss of landscape continuity).
- At the site preparation phase, 14 activities would cause IRRELEVANT impacts, 21 would cause MODERATE impacts, and 6 are SEVERE (alteration of relief and topography, alteration of physicochemical properties, impact on natural groundwater flow, reduced aquifer recharge, and altered wildlife corridors).
- At the construction phase, 16 IRRELEVANT impacts, 21 MODERATE impacts, and 4 SEVERE impacts (modification of relief, impact on natural groundwater flow, loss of habitat and refuge for small animals and consequent departure of animals, and loss of landscape continuity) are observed.
- At the operating phase, 5 impacts are IRRELEVANT and are MODERATE [sic].
- The main beneficial impacts would be job creation, investment driving urban development in the area, and occupying a vacant lot to improve security in the area. These three beneficial impacts would extend beyond the project area, and as to their duration, they would be immediate, they would persist temporarily during the site preparation and construction phases, and would become permanent in the operating phase. They are reversible in

¹⁴ SEM-19-002 (City Park Project) at ¶21.

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the medium term, are obtained immediately, do not create synergies, are not cumulative, and are direct effects.¹⁵

On 15 November 2017, the DGGA issued Environmental Ruling no. D.U. 22-6671 in re file no. MIA-MG-506-2017 submitted by MRP CKD, S. de R.L. de C.V., a corporation representing CI BANCO, Sociedad Anónima de Institución de Banca Múltiple, for the preparation and construction of the City Park project (first phase).

The first operative paragraph in the DGGA ruling stated that the first phase of the City Park project was viable on an area to be developed of 27,449.39 m², as well as a contiguous area of 2,349.60 m² along Boulevard José María Morelos dedicated solely and exclusively to access and materials yard.

In addition, point 1 of paragraph VII of the third operative paragraph of the ruling stated that the approval in question was issued exclusively for the first phase of the City Park project, to be located at Boulevard José María Morelos no. 1555, near the intersection with Boulevard Adolfo López Mateos, Granjas del Rosario district, municipality of León, Guanajuato, on an area of 27,449.39 m² to be developed on the central part of the premises during the first phase, consisting of a shopping mall with movie theatres, boutiques, supermarkets, mid-sized anchor stores, and commercial space, with a contiguous area of 2,349.60 m² dedicated solely and exclusively to access and materials yard, with the breakdown of areas as follows:

Item	Area (m ²)
Total area of premises (as per deed)	60,504.32
Total area of part to be developed	27,449.39
Area occupied by access and materials yard (contiguous to project)	2,349.60
Area occupied by retail business (two levels)	10,012.11
Area occupied by commercial traffic and walkways	8,374.03
Area occupied by offices	336.48
Area occupied by residences (20 stories with 156 apartments)	244.46
Area occupied by hotel (16 stories with 199 rooms)	191.29
Area occupied by parking facilities (3 underground levels for 2196 cars)	5,716.04
Area occupied by green space	2,547.98

Figure 2

¹⁶ SEM-19-002 (City Park Project) at ¶21.

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A review and analysis of the documents contained in the EIA file for environmental impact statement MIA-MG-506-2017 for the City Park project shows that the project does not fit any of these criteria. While it is true that paragraph V(b) of the above-cited legal provision could allow for the approval of the works and activities relating to the residential area (20 stories with 156 apartments) that occupies 244.46 m² of the City Park project, the project consists of diverse works with a total area of 27,449.39 m², as indicated in Figure 2.

- Area of access and materials yard (area contiguous to project).
- Area occupied by retail business (two levels).
- Area occupied by commercial traffic and walkways.
- Area occupied by offices.
- Area occupied by residences (20 stories with 156 apartments).
- Area occupied by hotel (16 stories with 199 rooms).
- Area occupied by parking facilities (3 underground levels for 2196 cars).
- Area occupied by green space.

It may therefore be concluded that the DGGA of the municipality of León, Guanajuato should have adhered to the provisions of REIA-Guanajuato Article 10 paragraph XVIII, pursuant to which the Guanajuato State Institute of Ecology was the competent authority for all those works or activities which, due to their magnitude, generate significant, residual, synergistic, or cumulative environmental impacts and are not expressly reserved to the federal government, as in the present case, since as mentioned in the first paragraph of RGA-León Article 87, the DGGA can only conduct environmental impact assessments and issue approvals where environmental impact assessment approval by the federal or state authorities is not required.

Nor is there any evidence of the existence of an agreement determining those works and activities to be assessed by the municipality of León pursuant to REIA-Guanajuato Articles 8 and 9 and LPPAEG Articles 7 paragraph XVII, 29 second paragraph, and 44, which are transcribed below.

Guanajuato State Environmental Protection Act

Article 8. The Institute and the Office of the Attorney may sign coordination agreements with the municipalities for the purpose of having the latter, within the scope of their respective jurisdiction, take on those responsibilities relating to environmental impact assessment, environmental risk, and environmental impact, as well as inspection and surveillance, respectively, to which this Regulation refers.

In any case, the exercise of such powers by the municipalities shall conform to the provisions of the Mexican Environmental

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Protection Act, the Act, this Regulation, and any other applicable legal provisions.

Article 9. Any coordination agreements signed by the Institute and the Office of the Attorney with the municipalities for the purposes of the preceding article shall conform to the following:

I. they shall specify the works or activities to be assessed, the period in which the agreements are effective, the manner in which they may be terminated and, as applicable, extended, and how disputes are resolved under them;

II. they shall define the administrative units responsible for taking the measures necessary for the implementation of the agreements and the undertakings set out therein;

III. they shall describe the resources to be provided by the parties, establishing how they will be used and administered;

IV. they shall establish the management indicators necessary to determine the results of the joint measures taken, and

V. they shall contain any additional stipulations deemed necessary by the parties for their proper fulfillment.

The instruments to which this article refers shall be published in the official gazette of the state government.

No evidence is provided by the documents in the file of this environmental procedure that there exists any agreement between the state of Guanajuato and the municipality of León regarding the conduct of the EIA, since on 20 December 2019, Profepa, in file no. PFPA/5.3/2C.28.5.1/10653, submitted a certified copy of the procedure followed in the case of environmental impact statement MIA-MG-506-2017 for the City Park project, processed by the DGGA of the municipality of León.

A review of this procedure does not point to the existence of any coordination agreement signed by the Guanajuato State Institute of Ecology and the municipal council of León, Guanajuato for the assessment and approval of this project, as prescribed by the provisions of REIA-Guanajuato Articles 8 and 9.

This is important, since in the Mexican legal order as it bears on administrative matters, in order for such an act or agreement to be legal, it would have been necessary to adhere to the procedure for delegation to the municipality of León of the powers relating to environmental impact assessment and approval by the DGGA, as per the following requirements:

1. The signing of an agreement with the Institute of Ecology as prescribed by REIA-Guanajuato Articles 8 and 9.

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2. Establishment of the content of the agreement with respect to the works or activities to be assessed, pursuant to LPPAEG Article 44.
3. Publication of the agreement with the Institute as prescribed by the last paragraph of Article 9.

In light of the foregoing, it may be concluded that the municipality of León was not competent to issue approval within the context of the EIA procedure for the City Park project and that the following provisions were therefore violated: LGEEPA Articles 4, 7 paragraph XVI, and 8 paragraph XVII [sic], and LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII and Article 8 paragraph I.

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b) Modality applicable to the City Park project EIS

Concerning the applicable EIS modality, the Secretariat found in favor of a review of LGEEPA Article 30, which establishes the information that an EIS must contain and that the manner in which the EIS modality is determined for any project is to be provided by regulation. This provision is therefore closely related to REIA Articles 10 and 11 paragraph IV, which establish the modalities of environmental impact statements submitted to the authority in connection with projects which, due to their interaction with various regional environmental components, are anticipated to cause cumulative, synergistic, or residual impacts that could lead to the destruction, isolation, or fragmentation of ecosystems.¹⁶

Additionally, the Secretariat found in favor of a review of LPPAEG Article 31, since the Submitter contends that the City Park project should have been subjected to one of the EIS modalities, whether general, intermediate, or specific. On REIA-Guanajuato Articles 19, 20, 21, 25 and 27 [sic].¹⁷

For greater clarity on what these provisions regulate, they are transcribed as follows:

Mexican Environmental Protection Act

ARTICLE 30. In order to obtain the authorization contemplated in Article 28 of this Act, interested persons shall submit to the Ministry an environmental impact statement which shall contain, at a minimum, a description of the possible effects on the ecosystem or ecosystems that may be affected by the work or activity in question, considering the sum total of the elements making up said ecosystems as well as the preventive, mitigation, and other measures necessary to avert and/or minimize the negative effects on the environment.

Where the activities in question are considered high-risk pursuant to this Act, the statement shall include the applicable risk study.

Where modifications are made to the plan for the work or activity in question subsequent to the filing of an environmental impact statement, the interested persons shall notify the Ministry thereof so that the latter may, within a period not to exceed ten days, notify them whether the submission of any additional information is necessary in order to assess the potential environmental impacts of the modifications, as prescribed by this Act.

The contents of the preventive report, as well as the characteristics and modalities of the environmental impact statements and risk studies, shall be established by the Regulation to this Act.

¹⁶ SEM-19-002 (City Park Project) at ¶21.

¹⁷ *Ibid.*

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Environmental Impact Assessment Regulation to the LGEEPA

Article 10. Environmental impact statements shall be submitted in the following modalities:

I. regional, or

II. specific.

Article 11. Environmental impact statements shall be submitted in the regional modality in the case of:...

IV. projects intended to be developed on sites which, due to their interaction with various regional environmental components, are anticipated to cause cumulative, synergistic, or residual impacts that could lead to the destruction, isolation, or fragmentation of ecosystems.

Guanajuato State Environmental Protection Act

ARTICLE 31. Once the application to which the preceding article refers is submitted, the State Institute of Ecology shall, within a period of 10 working days, decide whether the interested parties must subject the work or activity in question to the applicable environmental impact assessment procedure, or whether this is not necessary.

Where, at the end of this period, the State Institute of Ecology has not issued such a decision, it shall be understood that the filing of an environmental impact statement is not necessary.

Where the decision refers to the necessity of environmental impact assessment, it shall establish the corresponding modality, which may be general, intermediate, or specific, as prescribed by the regulation to this Act.

Environmental Impact Assessment Regulation to the Guanajuato State Environmental Protection Act

Article 19. At the end of the period mentioned in Article 16 of the Regulation, the Institute shall issue a decision pursuant to Article 41 of the Act and, as applicable, shall set out the maximum period for the commencement of the work and for the completion thereof, considering the timeline contained in the EIS.

The developer may request one and only one extension of the commencement and completion dates; this must be requested in writing at least 15 days prior to the commencement date or 30 days prior to the completion date, stating the reasons for the request and the new timeline for the work, for consideration by the Institute.

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Article 20. Developers who desist from carrying out or performing the work or activity in question shall give timely written notice thereof to the Institute, either:

I. prior to the granting of approval during the assessment procedure, or

II. immediately upon suspension of the work, after approval has been granted, in which case the obligated parties shall adopt and carry out any measures deemed necessary by the Institute, where the interruption of the work or activity creates a risk of ecological or environmental alterations.

Article 21. Prior to the granting of approval, the interested party shall give notice to the Institute of any change or modification to the project described in the EIS, and the Institute may request additional information to assess the environmental effects arising from such modifications, where such effects are not significant, or may require the filing of a new environmental impact statement, where the proposed modifications may cause ecological instability, health harms, or cumulative or synergistic impacts.

Article 25. For the purposes of keeping information confidential, the Institute may require the developer to give justification of any industrial property rights or lawful commercial interests adduced.

Article 27. The assessment of the specific modality of the environmental impact statement shall apply where the works or activities are intended to be located on sites where the management policies set out in the Territorial Ecological Zoning Plan correspond to protection and conservation, or whose location is within protected natural areas, and where, in either case, the destruction or isolation of ecosystems is anticipated.

As regards the alleged failure to effectively enforce LGEEPA Article 30 and REIA Articles 10 and 11 in connection with the assignment of the EIS modality for the City Park project, a review and analysis of these provisions indicates that they are not applicable to the case at hand, since this response does not address matters relating to the federal EIA procedure because [...] *Confidential information at Party's request under Article 113, paragraph XI of Mexico's General Law on Transparency and Access to Public Information (Ley General de Transparencia y Acceso a la Información Pública)* it is the subject of amparo. Therefore, the enforcement of LGEEPA Article 30 and Articles 10 and 11 of its environmental impact assessment regulation will not be discussed or challenged here.

Concerning LPPAEG Article 31, an interpretation of this provision shows that it does not address matters relating to the modality of the EIS; rather, it makes reference to the power of the Guanajuato State Institute of Ecology to decide, within a 10-day period, whether the EIA procedure applies to activities or works for which

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approval is requested. Therefore, the Party's view is that this article does not relate to the matters raised by the Submitter in this submission process.

Now, as to the Secretariat's determination concerning the alleged failure to effectively enforce REIA-Guanajuato Articles 19, 20, 21, 25, and 27, in connection with the assignment of an EIS modality to the City Park project, the Party's position on Articles 19, 21, 25, and 27 is that these are general provisions governing various obligations of environmental impact approval applicants to the Guanajuato State Institute of Ecology but that they make no provision relating to noncompliance with these modalities or with any other obligation established within the EIA procedure.

As for REIA-Guanajuato Article 20, establishing various requirements relating to the "General B" EIS modality, the Party's position is that its review would be appropriate; it reads as follows:

Article 20. The "General B" modality of the environmental impact statement shall be filed in the case of works or activities which, due to their nature, location, dimensions, amplitude, and/or characteristics are anticipated to cause environmental impacts that may extend beyond the boundaries of the site.

A review and analysis of the EIS filed by the project developer (MPR León), prepared by Ecogroup-La Red de Soluciones Ambientales for the City Park project, shows that it indicates that the project could cause severe and synergistic impacts relating to altered natural groundwater flows, reduced aquifer recharge, wildlife corridors, loss of habitat and refuge for small animals and consequent departure of animals, and loss of landscape continuity.¹⁸

It further indicates that the impacts provoked by the works and construction approved in connection with the City Park project would cause significant effects on water and the biodiversity of Los Cárcamos Park, mainly due to filling, clearing of vegetation, excavation, and installation of urban infrastructure for the project at the preliminary, site preparation, and construction phases.

This is because, as mentioned by the developer in the "Comprehensive study for the conservation of Los Cárcamos Park, León, Guanajuato" prepared by CIATEC, A.C., Soluciones Tecnológicas, Los Cárcamos Park, comprising a body of surface water called "Los Cárcamos," lies to the south of the proposed City Park project. In this regard, the study states as follows:

¹⁸ File no. MIA-MG-506-2017, vol. II, at 169-70.

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The water in the El Palote reservoir exerts pressure that acts on the area of water upstream of the dam, as well as on the porosity of the foundation rock; the water filters through the body of the dam and its supports, transmitting internal pressures known as suppression. The effect produced is ascending vertical flow giving rise to small bodies of water. In the case of the study area, these flows were observed in the body of water located in Los Cárcamos Park.¹⁹

It is thus clear from the analysis performed by CIATEC, A.C., Soluciones Tecnológicas that the body of water called "Los Cárcamos" could be affected due to being fed by groundwater from the El Palote reservoir situated approximately 450 metres upstream.

On another matter, the review and analysis contained in the bird study for the City Park project, performed by Eco Group Environment Consulting Group in June 2017, identified a list of 32 bird species belonging to 19 families and 29 genera that are found in the area of the City Park project, of which 4 are catalogued as conservation priorities (Mexican Duck, *Anas platyrhynchos diazi*; White-winged Dove, *Zenaida asiatica*; Mourning Dove, *Zenaida macroura*, and Red-lored Amazon, *Amazona autumnalis*). In total, the bird species diversity found on the project site corresponds to 8.7% of the avifauna of the state of Guanajuato, while 126 species are reported from the Metropolitan Park protected natural area, corresponding to 34% of the state species count.²⁰

Furthermore, the bird study states that of the 32 species identified, 15 were observed making use of the physical space of the project, 21 species were observed on the edge of it, 31 species were observed in its airspace,²¹ and 69% of the species were recorded in the existing corridor between Los Cárcamos Park and Metropolitan Park.

Thus, according to the results of the "Comprehensive study for the conservation of Los Cárcamos Park, León, Guanajuato" and the bird study for the City Park project, as well as the information contained in the EIS filed by the project developer (MPR León), the DGGGA should have taken into consideration the provisions of REIA-Guanajuato Article 20 for the purposes of referring the file to the competent authority, since as discussed above, the environmental impacts that would be caused by the project could lead to severe and synergistic impacts related to altered natural groundwater flows, reduced aquifer recharge, wildlife corridors, loss of habitat and refuge for small animals and consequent departure of animals, and loss of landscape continuity.

¹⁹ Ibid., vol. IV, at 76-7.

²² Submission at 6.

²² Submission at 6.

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For these reasons, the Party's view is that REIA-Guanajuato Article 20 was violated, in that the competent authority should have required an EIS in the "General B" modality, since this is a work or activity which, due to its nature, location, dimensions, amplitude, and/or characteristics, is anticipated to cause environmental impacts that may extend beyond the boundaries of the site.

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c) Process followed during environmental impact assessment procedure

The Submitter asserted that the DGGGA failed to effectively enforce various provisions of the RGA-León in relation to the following aspects: the documents should that have been submitted in support of the EIS; the items and information that should have made up the corresponding file; the period in which to conduct a technical visit; the content of the EIA report; the cases in which the EIA procedure must be suspended, and the time period for the fulfillment of the requirements imposed by the environmental authority on the project developer, pursuant to RGA-León Articles 104, 105, 106, 107, 108, 109, 110, 112, 113, and 114.²²

In this regard, the Secretariat noted that only RGA-León Articles 104 and 105 were being retained for enforcement review. These relate to the Submitter's assertions in regard to the formalities of the environmental impact assessment procedure²³ and are transcribed as follows:

Article 104. For the environmental impact assessment of any work or activity contemplated in this chapter, the applicant shall file the corresponding application with the DGGGA prior to the commencement of the work or activity in question, accompanied by:

I. the documentation demonstrating ownership or possession of the premises on which the work or activity is to be carried out;

II. the land use permit for the real property where the work or activity is intended to be carried out, issued by the competent municipal authority;

III. the applicable modality of the environmental impact statement, and a digital copy thereof;

IV. the summary of the project to which Article 121 of this regulation refers and a digital copy thereof;

V. uncertified copies of the permits, licenses, approvals, and concessions obtained for the purposes of carrying out the work or activity.

Article 105. The environmental impact assessment file is composed of:

I. the application filed, with all its appendices;

II. the environmental impact statement, with all its appendices;

²² Submission at 6.

²³ SEM-19-002 (City Park Project), at ¶23.

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III. any requirements for complementary information as well as any clarifications, elaborations, or rectifications to the content of the environmental impact statement and the information provided by the applicant in this regard;

IV. the records of any technical visits that may have occurred;

V. any requests for reports or opinions and the responses to those requests;

VI. the minutes of the public information meeting, as applicable, and any written comments or observations made by the participants therein;

VII. any modifications that may have been made to the project;

VIII. the technical report signed by the competent public servant;

IX. the definitive decision on the proceeding;

X. documentation of any guarantees given;

XI. the notices of commencement of the site preparation phase and of completion of the construction phase;

XII. any reports issued by the official responsible for the decision or by the supervisor of environmental technical services;

XIII. any other documentation submitted to the DGGA that has a direct bearing on the project.

The review of file no. MIA-MG-506-2017, which was prepared by the DRA of the municipality of León, Guanajuato, indicates that the applicant for environmental impact approval filed the following documents:

- The documentation demonstrating ownership or possession of the premises on which the work or activity is to be carried out.
- The land use permit for the real property where the work or activity is intended to be carried out, issued by the competent municipal authority.
- The applicable modality of the EIS and a digital copy thereof.
- The summary of the project to which Article 121 of this regulation refers and a digital copy thereof.

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- Uncertified copies of the permits, licenses, approvals, and concessions obtained for the purposes of carrying out the work or activity.

[See Appendices 7 and 8.]

In addition, as regards the preparation of the EIA file as prescribed by REIA-León Article 105, the review of the contents of file no. MIA-MG-506-2017 concerning the City Park project shows that it is made up of the following documents:

Volume I:

- Land use permit
- Feasibility documentation
- Public consultation
- Assignment of modality
- Authenticated copies of documents
- Required legal documents relating to the property
- Tree management
- Project manager
- Project plans

Volume II:

- Payment of fees
- Conagua document
- Public summary of environmental impact statement
- Environmental impact statement for the "City Park" project, Phase 1
- Written record of field inspection
- Complementary information
- Technical opinions (Department of Public Works, College of Engineers of León)
- Extension of period for decision on environmental impact assessment

Volume III:

- Technical appendices
- Field and laboratory studies
- Geotechnical model
- Foundation analysis
- Various maps and plans

Volume IV:

- Technical studies
- Bioclimatic criteria
- Soil mechanics
- Foundations and seismicity

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- Comprehensive study for the conservation of Los Cárcamos Park
- Bird study
- Priority Species Management Plan
- Geohydrological study
- Decision on general modality of environmental impact statement no. MIA-MG-506-2017.

[See Appendices 7, 8, 9 and 10.]

The analysis of the documents filed shows that the DGGGA did not prepare the following documents:

- The minutes of the public information meeting, as applicable, and any written comments or observations made by the participants therein.
- Any modifications that may have been made to the project.
- Documentation of any guarantees given.
- The notices of commencement of the site preparation phase and of completion of the construction phase.
- Any reports issued by the official responsible for the decision or by the supervisor of environmental technical services.

It may be concluded from the foregoing discussion that the Submitter's assertions concerning failures of effective enforcement by the DGGGA are partly founded with respect to REIA-León Article 105 paragraphs VI, VII, X, XI, and XII.

The Submitter further contends that the DGGGA was required to publicize the information on the projects that it received for assessment in the form of a list of environmental impact statements, and publish it along with a summary of the project in a large-circulation newspaper in the state, as prescribed by RGA-León Article 120:

Article 120. The DGGGA shall prepare and publish the list of environmental impact statements it receives for assessment as prescribed by this regulation, which shall contain, at a minimum:

- I. the file number assigned by the DGGGA;
- II. the filing date of the application;
- III. the name of the project or the identification of its components;
- IV. the modality of the environmental impact statement filed;
- V. the location of the site where the work or activity is to be carried out. This list must be updated each week, including any

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new environmental impact statements received in the preceding period, and removing all those for which the procedures have been completed, as prescribed by this chapter.

In this regard, it is important to mention that the authorities competent to conduct environmental impact assessments and, as applicable, issue the corresponding approvals within the scope of their respective jurisdictions have the obligation to inform the public of any works or activities intended to be carried out within the territory that may cause ecological instability or exceed the limits and conditions set out in the applicable provisions for the protection of the environment and the preservation and restoration of ecosystems.

This means not merely the fulfillment of the requirements or the accomplishment of the administrative procedures contemplated in the environmental law applicable to the EIA process, but also, since the activities in question may affect the environment, the list of applications for environmental impact approval must be published in the media so that interested persons can intervene in a timely manner in matters affecting the environment where they believe that their sphere of rights will be directly or indirectly affected as a consequence of the works or activities to be carried out on the territory.

For this reason, it is extremely important to promote and guarantee such participation as part of the EIA procedure, so that any citizen, within the established timeframe, has the opportunity to:

- request that a public meeting be held, at which the technical/environmental aspects of the work or activity in question are explained;
- request that a public consultation be held on the work or activity in question, and
- propose the application of additional prevention and mitigation measures and make any relevant observations.

As stated above, the DGGGA was not the authority competent to perform the assessment and issue the corresponding environmental impact approval for the City Park project; nevertheless, within the EIA procedure for the City Park project, it should have seen to the enforcement of each and every provision of the RGA-León that concerns the right of public consultation and community participation.

Therefore, the Party's view is that there was a failure to effectively enforce the provisions of RGA-León Articles 104, 105, and 120, since not all of the documents required by these legal

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provisions were filed, nor was the obligation to guarantee the right to consultation and community participation fulfilled.

d) Wildlife

Concerning the species at risk that are present on the project site, the Submitter contends that there was a failure to enforce NOM-059-Semarnat-2010. In this regard, the Secretariat has found on previous occasions that this Mexican official standard qualifies as environmental law, since its primary purpose is the protection of native wildlife species of Mexico through the establishment of risk categories and the specifications for their inclusion on or exclusion from the list of species at risk.²⁴

The Submitter asserts that there was a failure to effectively enforce LGVS Article 9 paragraph XIII and RI-Semarnat Article 32 paragraph IV, as well as a failure to effectively enforce NOM-059-Semarnat-2010, with respect to the Priority Species Management Plan.²⁵

An analysis of LGVS Article 9 paragraph XIII shows that while the granting, suspension, and revocation of approvals is under federal jurisdiction, these measures are taken where the activities to be carried out by private persons are aimed at the conservation, transfer, import, export, and transit of wildlife within Mexico.

In this regard, the Government of Mexico wishes to inform the Secretariat that this provision is not applicable to the present submission process, since it may be concluded from a review and analysis of the Priority Species Management Plan that the primary purpose of this plan is the establishment of conservation guidelines for the species at risk or of conservation concern that make use of the physical space or airspace of the City Park project in León, through the adoption of habitat and population management measures as follows:

1. Estimation of the seasonal abundance of four priority species, *Anas platyrhynchos diazi*, *Zenaida asiatica*, *Z. macroura*, and *Amazona autumnalis*, in the Bajío region.
2. Description of the conservation status of the habitat for the priority bird species *Anas platyrhynchos diazi*, *Zenaida asiatica*, *Z. macroura*, and *Amazona autumnalis* in the Bajío region of Guanajuato.
3. Restoration of a thorn forest area.
4. Habitat improvement.

²⁴ SEM-19-002 (City Park Project), at ¶27.

²⁵ Submission at 13.

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5. Establishment of a communication plan on the values of biodiversity linked to urban environments in the municipality of León.
6. Favoring reproductive success through the installation of artificial nesting spaces for *Amazona autumnalis* and *Anas platyrhynchos diazi* in urban environments of León.

The purpose of these measures is to maintain the natural biodiversity of the priority species *Anas platyrhynchos*, *Zenaida asiatica*, *Z. Macroura*, and *Amazona autumnalis* in the Bajío region, due to the transit through the City Park project area by these species, and in particular the fact that the project site was used as a natural corridor and flyway for the species that use Los Cárcamos Park and Metropolitan Park in the municipality of León, Guanajuato.

Therefore, it may be concluded that this management program does not call for the conservation, transfer, import, export, or transit through Mexico of the species *Anas platyrhynchos diazi*, *Zenaida asiatica*, *Z. macroura*, and *Amazona autumnalis*; rather, it calls for the restoration and improvement of various areas considered to be suitable habitat in the Bajío region of Guanajuato. Consequently, there is no matter requiring the exercise of the powers resting with the Wildlife Branch (*Dirección General de Vida Silvestre-DGVS*) of Semarnat under RI-Semarnat Article 32 paragraph VI.

[See Appendix 11.]

Therefore, the Party's view is that while RI-Semarnat Article 32 paragraph VI qualifies as environmental law, the Submitter's assertions of alleged failures to enforce the environmental law by the DGGGA and the DGVS with respect to the Priority Species Management Plan are unfounded and should not form a part of this submission process.

As to the Secretariat's determination on NOM-059-Semarnat-2010, the Party's view is that while this Mexican Official Standard qualifies as environmental law and its primary purpose is the protection of wildlife species, the Submitter does not discharge its obligation to specify the reason or the specific impact, nor does it refer to the specific paragraph of the standard or of the Priority Species Management Plan that was allegedly not enforced with respect to the City Park project, since in essence, the standard refers to the categories and species that are at risk as well as the establishment of the criteria for the inclusion, exclusion, or change of risk categories for species and populations.

In support of this statement, the first paragraph of the standard is cited below.

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MEXICAN OFFICIAL STANDARD NOM-059-SEMARNAT-2010, ENVIRONMENTAL PROTECTION-MEXICAN NATIVE WILDLIFE SPECIES-RISK CATEGORIES AND SPECIFICATIONS FOR THEIR INCLUSION, EXCLUSION OR CHANGE-LIST OF SPECIES AT RISK

1. Objective and scope of application

The object of this Mexican Official Standard is to identify those wildlife species or populations that are at risk in Mexico through the creation of the corresponding lists, as well as to establish the criteria for inclusion, exclusion, or change of risk category for species or populations, by means of a method for assessing their risk of extinction, and its observance is mandatory throughout the territory of the nation for physical or legal persons promoting the inclusion, exclusion, or change of wild species or populations in any risk category established by this standard.

Thus, further to the analysis of the submission and the Secretariat's determination concerning the alleged failure to enforce NOM-059, there is no evidence that the Submitter made any application to the competent authority for the inclusion, change, or exclusion of species and/or populations in risk categories pursuant to paragraph 6 of the Mexican Official Standard in question,²⁶ nor, consequently, that any impact was caused by a failure to enforce this standard.

²⁶ 6. Criteria for the inclusion, change, or exclusion of species, subspecies, and populations in risk categories

6.1. For the determination of the risk category of an amphibian, bird, fungus, invertebrate, mammal, fish, or reptile species or population, the Mexican Wild Species Extinction Risk Assessment Method, described in Appendix I of this standard, shall be applied, and for the case of plants, the Plant Extinction Risk Assessment Method, described in Appendix II of this standard, shall be applied.

6.2. Where a taxon in any risk category is subdivided, all its components shall retain the higher risk category, even where, as a result of such subdivision, a portion of these components is included in a taxon with lower or no risk category. Where a taxonomic change occurs whereby different groups are combined into a new taxonomic entity, or where, for example, subspecies are raised to the rank of species, the new entities shall retain the higher risk category for their components.

6.3. For the inclusion, change, or exclusion of species and their populations in risk categories, the Ministry shall consider the following criteria:

6.3.1. Assessment

Whether the information submitted in writing meets the requirements specified in point 5.7 and, as applicable, points 5.8 and 5.9 of this standard.

6.3.2. Risk

Whether the real and potential factors causing a decline in: population size; number of viable populations and areas of distribution; genetic deterioration; the factors causing habitat deterioration or alteration; the background to the status of the species or to the population and its habitat, as the case may be, and the effects of any protection measures that may have been applied.

6.3.3. Distribution, singularity, and abundance

Rarity, singularity, taxonomic and/or ecological relevance, endemism, and/or genetic isolation as intrinsic attributes of a species. A species is considered rare where its populations are biologically viable but naturally scarce, its natural distribution is limited, or it has very specific habitat requirements.

6.3.4. Association

The possible role as a keystone species and the principal associations of the species or populations with others and with the other components of the ecosystem.

6.3.5. Management

Any management measures that may have been taken or are being taken for the species or population, taking account of traditional uses or the cultural or economic relevance of the species or population.

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For these reasons, the Party's view is that the standard in question should be excluded from the present submission process, since there was no failure to enforce LGVS Article 9 paragraph XIII, RI-Semarnat Article 32 paragraph VI, or NOM-059-Semarnat-2010.

6.3.6. Exclusion

Allows for the exclusion of a species from the list where it is in the category subject to special protection and it is found that the protective measures have been and will continue to be adequate and sufficient to halt the pressures to which the species was subjected and to ensure its viability.

6.4. Where a population or species formerly considered to be probably extinct in the wild is rediscovered or reintroduced, its category shall immediately be changed to endangered.

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IV. CONCLUSIONS

As to the possible violation of LGEEPA Articles 5 paragraph X and 6, the study of these provisions is not entertained here because their primary purpose is to regulate federal EIA-related powers, which are the subject of several pending administrative and jurisdictional proceedings.

It is the Party's view that there were violations of LGEEPA Articles 4, 7 paragraph XVI, and 8 paragraph XVI in relation to LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I in that it could not be demonstrated that the works or activities that may be assessed and approved by the municipalities pursuant to LPPAEG Article 44 coincided with the works or activities assessed in connection with the EIS for the City Park project. Nor was it demonstrated that any agreement has been signed between the state of Guanajuato and the municipality pursuant to REIA-Guanajuato Articles 8 and 9.

Concerning the possible violation relating to the modality applicable to the City Park project EIS, the Party's view is that in this instance there was no violation of LPPAEG Article 31 or REIA-Guanajuato Articles 19, 21, 25, and 27, since these provisions do not relate to any of the facts alleged by the Submitter and constitute provisions of a general nature regulating various obligations imposed on applicants for approval to the Guanajuato State Institute of Ecology.

As to LGEEPA Article 30 and REIA Articles 10 and 11 paragraph IV, it is the view of the Party that these provisions should not be reviewed since they regulate the federal EIA procedure, which, as mentioned earlier, is not addressed in this response since the matters in question are the subject of pending administrative and judicial proceedings.

However, the Party's view is that there was a failure to effectively enforce REIA-Guanajuato Article 20 in that the EIS should have been submitted in the "General B" modality, since this is a work or activity which, due to its nature, location, dimensions, amplitude, and/or characteristics, could cause environmental impacts that may extend beyond the boundaries of the site; the review and analysis of the EIS filed by the project developer (MPR León) indicates that the project could cause severe and synergistic impacts relating to altered natural groundwater flows, reduced aquifer recharge, wildlife corridors, loss of habitat and refuge for small animals and consequent departure of animals, and loss of landscape continuity.

In relation to the violation of RGA-León Articles 104, 105, and 120 in connection with the process followed during the EIA procedure, the Party's view is that indeed, not all of the documents required by these legal provisions were filed, nor was

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the obligation to guarantee the right to consultation and community participation fulfilled.

The Party contends that there were no failures to enforce LGVS Article 9 paragraph XIII, RI-Semarnat Article 32 paragraph VI, or NOM-059-Semarnat-2010 in this case, since the review and analysis of the Priority Species Management Plan indicates that this plan focuses on maintaining the natural biodiversity of priority species, which, in the Bajío region, include Mexican Duck, *Anas platyrhynchos diazi*; White-winged Dove, *Zenaida asiatica*; Mourning Dove, *Zenaida macroura*, and Red-lore Amazon, *Amazona autumnalis*. This is due to the fact that these species use the area in which the City Park project is intended to be developed and the fact that the site sits between Metropolitan Park and Los Cárcamos Park in the municipality of León, Guanajuato, and there is no application concerning the conservation, transfer, import, export, or transit of these species.

Furthermore, the Submitter did not fulfill its obligation to state the reason or the specific impact asserted, nor did it mention the specific section of the standard that was allegedly not applied to the City Park project or, as the case may be, to the Priority Species Management Plan since, in essence, the standard refers to the categories and species that are at risk. Therefore, this standard does not apply to the present submission process.