

May 24, 2022

CEC Secretariat  
Legal Affairs and Submissions on Enforcement Matters Unit  
700 de la Gauchetière Street, Suite 1620  
Montreal, Quebec, Canada  
H3B 5M2  
Email: [sem@cec.org](mailto:sem@cec.org)

**Subject: Submission on the effective enforcement of environmental law, filed pursuant to Article 24.27 of the United States-Mexico-Canada Agreement, regarding Mexico's failure to effectively enforce environmental law to protect the coastal ecosystem of Playa Hermosa, located in Ensenada, Baja California**

Dear CEC Secretariat:

As detailed in this submission on the effective enforcement of environmental law, filed by th [REDACTED]  
[REDACTED], in accordance with the provisions of Article 24.27 of the United States-Mexico-Canada Agreement (USMCA), Mexico is failing to enforce its environmental law by allowing the Playa Hermosa coastal ecosystem to be impacted.

The members of the undersigned organizations and groups are residents and users from Ensenada, Baja California. Our concrete objectives are to protect the region's systems of beaches and dunes, through observance of the law, as well as to propose and support the implementation of evidenced-based actions, civic participation, openness, access to public information, the creation of spaces for communicating and collaborating with the public and private sectors, and to guarantee public access to these sites. Notifications or replies to this submission may be sent to: [REDACTED]

In particular, the object of this submission is bring to the CEC's attention Mexico's failure to adequately enforce environmental law in two cases affecting the Playa Hermosa (beach): 1) The "CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA" (*CONSTRUCCIÓN DE MALECÓN Y NÚCLEOS DE SERVICIOS DE PLAYA HERMOSA*), funded and implemented by the Ministry of Agricultural, Territorial and Urban Development (*Secretaría de Desarrollo Agrario, Territorial y Urbano—Sedatu*), at the request of the City of Ensenada; and 2) the polluting of this beach due to inadequate wastewater treatment by the State Public Utilities Commission-Ensenada (*Comisión Estatal de Servicios Públicos de Ensenada—CESPE*).

Ensenada has few green spaces. This means that its beaches satisfy an important civic need as recreational areas. Moreover, due to the lockdown which citizens were forced to observe during the COVID-19 pandemic, mental health and stress-related problems increased in the population.<sup>1</sup>

As the only public beach that is particularly accessible, due to its central location in the city, Playa Hermosa enjoys an iconic status in Ensenada culture. Unfortunately, while the intent of the works of the “CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA” is to improve public spaces, this project is being implemented in an illegal manner as it lacks permits required under federal environmental law. Furthermore, water is being polluted on this site, mainly by discharges of untreated wastewater, which makes it impossible for Ensenada’s families to enjoy nature and leisure activities such as surfing.

The preparation of a factual record could help clarify law enforcement processes in Mexico and shed light on how citizens’ may obtain accountability regarding the authorities’ environmental decisions. Playa Hermosa could become a case study of what must not occur and the lessons learned could be replicated elsewhere to improve coastal management in Mexico. The members of the petitioning organizations (the Submitters) are affected parties in that they have suffered prejudices in respect of their rights to public participation and to remedies for environmental damages.

The system of dunes on Playa Hermosa was destroyed over a year ago. However, to date, no actions have been taken to restore this ecosystem. Furthermore, construction work is still ongoing despite the lack of environmental permits. Likewise, untreated wastewater discharges remain a problem.

## I. Statement of Facts

1. With the construction and subsequent expansion of the Port of Ensenada, the city’s sandy beaches became less sandy and flatter. Eventually, all that remained was the portion of the coastline known as “Playa Hermosa.” In 2010, a 750-meter boardwalk was constructed on this beach along Lázaro Cárdenas Coastal Boulevard from the intersection at Boulevard Estancia up to Las Palmas Street. In the end, Playa Hermosa, which is used by thousands of local citizens, remained the sole public beach in urban Ensenada.

2. Playa Hermosa is used for family gatherings, children’s recreation, sports, walks and relaxation. All of these free outdoor activities became particularly important as ways of relieving stress and anxiety associated with the lockdown imposed during the public health emergency wrought by the COVID-19 pandemic.

---

<sup>1</sup> Mireia Gascon, M. Triguero-Mas, D. Martínez, P. Dadvand, J. Forn, A. Plasencia and M.J. Nieuwenhuijsen, “Mental Health Benefits of Long-Term Exposure to Residential Green and Blue Spaces: A Systematic Review,” *International Journal of Environmental Research and Public Health* 12, 4 (2015): 4354-4379.

3. Playa Hermosa's popularity among the citizens of Ensenada triggered an economic recovery in this part of the city, where hotels were built and restaurants and businesses established. Playa Hermosa is, undoubtedly, a scarce non-renewable natural resource of great value. As such, it represents a key asset in a city with a clear calling as a tourist destination.

4. On 8 November 2011, the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) issued an Environmental Impact Authorization, subject to conditions, via communication no. DFBC/SGPA/UGA/DIRA/3826/11, to Baja California's Ministry of Infrastructure and Urban Development (*Secretaría de Infraestructura y Desarrollo Urbano*—SIDUE), for the implementation of the project known as "CONSTRUCTION OF EQUIPMENT AND INFRASTRUCTURE AND RESTORATION OF COASTAL VEGETATION TO IMPROVE THE ENSENADA MUNICIPAL BEACH (PLAYA HERMOSA), STAGE ONE," on a 124,061.15 m<sup>2</sup> site.<sup>2</sup> This project consisted of three sections, with the services areas to be located in sections one and three, and section two to be used exclusively for conservation of the beach in its natural state and dune vegetation restoration.

5. The boardwalk constructed in 2011 on Playa Hermosa included ramps that were installed to provide access to the beach. Built on raised columns, these ramps do not block the natural flow of sand all along the beach. This boardwalk ramp design was a response to the need to allow the natural circulation of sand in the beach's system of dunes and thereby maintain processes that offset the natural loss of sand from marine erosion. In the end, the system of dunes was preserved. As were the natural processes which maintain the sandy beach.<sup>3</sup>

6. Coastal dunes function as sand deposits and reservoirs that offset the volume of beach sand lost due to marine erosion. At various points along Bahía de Todos Santos, on beaches that are to the south of Playa Hermosa, one can clearly see how development projects built on the coast, which entailed removing sand dunes, have caused a progressive narrowing of these beaches, to the point where some totally disappear during high tide.

7. On 3 July 2014, the "Ecological Management Program of Baja California" was published in *Periódico Oficial del Estado de Baja California*, the state's official gazette. Among the notable environmental policies set forth in this instrument is its "Conservation Policy" with respect to areas of the state with natural features considered fragile, including coastal dunes, which are specifically mentioned.<sup>4</sup>

<sup>2</sup> Semarnat, communication DFBC/SGPA/UGA/DIRA/3826/11 (8 November 2011) <<https://bit.ly/3LIQj40>>.

<sup>3</sup> Carlos Peynador Sánchez (coord.), *Programa de Manejo para la Playa Pública Playa Hermosa, localizada en la Bahía de Todos Santos, Municipio de Ensenada, Baja California, México (Promapp)*, Lorax Consultores S.A. de C.V. (September 2008) <<https://bit.ly/3PE32ln>>.

<sup>4</sup> Secretaría de Protección al Ambiente, Gobierno del Estado de Baja California, *Programa de Ordenamiento Ecológico del Estado de Baja California* (2014) <<https://bit.ly/3Gf6vIU>>.

8. Bahía de Todos Santos, which includes Playa Hermosa, has been identified as an “Important Bird Area” (MX103 - Bahía de Todos Santos) by the National Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional para el Conocimiento y Uso de la Biodiversidad*—Conabio). Furthermore, in September 2017, it was also designated as a “Site of Regional Importance” in the Western Hemisphere Shorebird Reserve Network. Among the reasons for these designations, which are of international relevance, is Playa Hermosa’s status as a habitat for at least 16 bird species listed in Official Mexican Standard NOM-059-Semarnat-2010, which depend on the preservation of sandy beaches and dunes for their survival.

9. On 15 October 2020, Semarnat published in *Diario Oficial de la Federación*, Mexico’s official gazette, the concession permit granted to the City of Ensenada, Baja California, covering 19,118.623 square meters of the Federal Maritime Terrestrial Zone (*Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar*—Zofemat), located on Boulevard Lázaro Cárdenas, Acapulco subdivision, Ensenada, Baja California, for the purposes of beautification works.<sup>5</sup>

10. On 2 March 2021, the mayor of Ensenada, ARMANDO AYALA ROBLES officially announced the “CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA,” by symbolically putting the first shovel in the ground at the Playa Hermosa boardwalk construction site. This announcement was made on the mayor’s official Facebook page: <https://de-de.facebook.com/ArmandoAyalaRobles/videos/895743731183066/>,

11. On 7 April 2021, the head of the Urban, Ecology and Environment Administration of the City of Ensenada informed, via communication 138/DPGA/2021, the Resident Engineer of the Undersecretariat for Urban Development and Housing that his Department had no objection to the granting of environmental impact feasibility assessment in relation to the execution of project PCA-2001EP006 “CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA.” However, although this agency is charged with prescribing technical measures and conditions, at no time did it mention the ban on building on dunes stipulated in the State of Baja California Ecological Management Program (*Ordenamiento Ecológico del Estado de Baja California*—POEBC). In failing to observe the POEBC, it violated Article 121 of the Regulation for Environmental Quality Control of Ensenada, as well as legal provisions on threatened species and special protection species and the Zofemat concession permit of 15 October 2020.<sup>6</sup>

12. On 20 May 2021, at 2:28 pm, the organization [REDACTED] published on its Facebook page, “Ensenada Ciudadana,” photos of the City of Ensenada’s construction works on Playa Hermosa.

<sup>5</sup> Secretaría de Medio Ambiente, “Acuerdo de Destino de Zona Federal Marítimo Terrestre a favor del Municipio de Ensenada,” *Diario Oficial de la Federación* (15 October 2020) <<https://bit.ly/3N1EveJ>>.

<sup>6</sup> Administración Urbana, Ecología y Medio Ambiente, Ayuntamiento de Ensenada, communication 138/DPGA/2021 (7 April 2021) <<https://bit.ly/3wFRX1T>>.

[REDACTED], photos of dunes being dredged on Playa Hermosa (30 May 2021) <[shorturl.at/dfozD](https://shorturl.at/dfozD)>.

13. On 21 May 2021, representatives of some of the petitioning organizations went to Playa Hermosa, where they discovered the presence of heavy machinery on the coastal ecosystem.<sup>7</sup> That is to say, this machinery was in the geographical space where the marine and terrestrial environments intersect and interact. In effect, coastal ecosystems are partly marine and partly land-based. More specifically, a few workers were engaged in grading and compacting sand, and coastal dune removal.

14. In May 2021, the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) opened Citizen Complaint file No. PFPA/9.7/2C.28.2/022-2021 against the City of Ensenada, or whomsoever should be found responsible for the construction works under way on Playa Hermosa's coastal dunes. In opening this file, Profepa grouped it together with other citizen complaints concerning this issue.

15. On 27 May 2021, a particular mode environmental impact statement was published in *Gaceta Ecológica* No. DGIRA/0023/21, Year XX, No. 23, p. 6, in relation to the "CONSTRUCTION PROJECT FOR THE PLAYA HERMOSA BOARDWALK AND SERVICES AREA" (key no. 02BC2021TD026), by construction company ACAR Obras y Proyectos.

16. Profepa announced the shutdown of the construction project in question on social media. In effect, on 31 May 2021, at 2 pm, Facebook@ProfepaOficial indicated that "La@PROFEPA\_Mxen [#BajaCalifornia](#) shut down a project that was impacting coastal dunes because it had failed to present an environmental impact authorization or its concession permit for the Zofemat and land reclaimed from the sea".<sup>8</sup>

17. On 3 June 2021, pursuant to and in keeping with the environmental impact process, certain of the Submitters filed a written request for public consultations and an information meeting with the Semarnat office in Baja California regarding the "CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA" (key no. 02BC2021TD026), promoted by ACAR OBRAS Y PROYECTOS, S.A. DE C.V.

18. On 2 June 2021, a letter signed by 10 residents of Ensenada was sent to the Mayor of Ensenada, Armando Ayala Robles and the Minister of Agricultural, Territorial and Urban Development, Roman Meyer Falcón, requesting an expedited hearing in order to express their concerns regarding the "CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA."<sup>9</sup>

19. On 10 June 2021, Mayor Armando Ayala stated, at 27:50, in a video uploaded to his official Facebook page @ArmandoAyalaRobles, that "...they are analyzing whether to extend the environmental impact study, as a matter of coordination, but the construction work will not be shut down. It will continue."

<sup>8</sup> Semarnat, PFPA/1.7/12C.6/0894/2022 (17 May 2022) <[shorturl.at/fAMW4](https://shorturl.at/fAMW4)>. See also "Clausura Profepa obra del gobierno federal en Playa Hermosa por no contar con permiso ambiental," *Periódico Zeta*, 31 May 2021 <<https://zetatijuana.com/2021/05/clausura-profepa-obra-del-gobierno-federal-en-playa-hermosa-por-no-contar-con-permiso-ambiental/>>, "Profepa clausura obra en Playa Hermosa por afectar dunas costeras," *El Imparcial*, 2 June 2021 <https://www.elimparcial.com/tijuana/ensenada/Profepa-clausura-obra-en-Playa-Hermosa-por-afectar-dunas-costeras--20210602-0023.html>>.

<sup>9</sup> [REDACTED] Hermosa, hearing request letter (2 June 2021) <[REDACTED]>.

20. On 10 June 2021, Semarnat **denied** an environmental impact authorization for “CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA,” via communication no. DFBC/SGPA/UGA/DGIRA/957/2021, dated 10 June 2021, as said project **violated preventive norms** established in LGEEPA Article 28 section X and Article 5 section R, paragraph I of the Regulation to the LGEEPA on Environmental Impact Assessment, by commencing works and activities without first obtaining an environmental impact authorization”.<sup>10</sup>

21. On 14 June 2021, a letter signed by four representatives of civil society was sent to the mayor of Ensenada to request a meeting to discuss the threats to the Playa Hermosa coastal ecosystem posed by the project in question.<sup>11</sup>

22. Although the coastal ecosystem of Playa Hermosa has already been damaged by the works undertaken by the City of Ensenada, said damages are not yet considered irreparable. Consequently, at this time this coastal ecosystem could still be restored, if and only if, the works presently under way cease totally and immediately, the heavy machinery on the dunes is withdrawn, and a process to restore Playa Hermosa’s system of dunes is begun.

23. On 13 July 2021, representatives from two organizations of skaters and sports clubs also requested a meeting with the municipal authorities to discuss the issue of the skate park project in Playa Hermosa.<sup>12</sup>

24. According to the 2022 report of the Clean Beaches Program of the Federal Commission for Protection against Health Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*—Cofepris), Playa Hermosa, a beach located in the City of Ensenada, Baja California, is not fit for recreational use, due to the high level of fecal matter in the water.<sup>13</sup>

25. According to the World Health Organization (WHO), when the concentration of enterococci exceeds 40 per 100 milliliters of water there exists a risk of contracting gastrointestinal and skin diseases. This becomes an imminent danger when the concentration reaches 200 enterococci per 100 milliliters of water.

26. [SIC: orig. 25] One of the causes of high water pollution levels at Playa Hermosa is the poor state of repair of the “El Gallo” wastewater treatment plant, which is operated by the Ensenada branch of the State Utilities Commission (*Comisión Estatal de Servicios Públicos de Ensenada*—CESPE). Apparently, said situation has been not immediately repaired.<sup>14</sup>

<sup>10</sup> Semarnat, communication DFBC/SGPA/UGA/DIRA/957/2021 (10 October 2021) <<https://bit.ly/3wKrwbr>>.

■ ■ ■ ■ ■, hearing request (14 June 2021) < ■ ■ ■ ■ ■ >.

<sup>12</sup> ■ ■ ■ ■ ■, hearing request letter (13 July 2021) < ■ ■ ■ ■ ■ >.

<sup>13</sup> Cofepris, “Monitoreo prevacacional de playas de semana santa 2022” (21 March 2022)

<<https://www.gob.mx/cms/uploads/attachment/file/715835/BajaCaliforniaSemanaSanta2022.pdf>>.

<sup>14</sup> Gerardo Sánchez, “Nuevo retraso de CESP Ensenada en planta de tratamiento,” *Monitor Económico/El Vigía*, 7 April 2022 <<http://monitoreconomico.org/noticias/2022/apr/07/nuevo-retraso-de-cesp-ensenada-en-planta-de-tratamiento/>>.

27. The Ensenada municipal government closed access to Playa Hermosa in February 2022 to avoid harming the health of the population that uses the site for recreation. This, however, has happened before in the past.

28. On 14 May 2022, around 200 people, including persons presently representing the Submitters, held a peaceful demonstration in Ensenada to demand the clean-up and restoration of Playa Hermosa.

29. On 15 May 2022, 93 residents of Ensenada used Profepa's citizen complaints system to file a digital citizen complaint (folio 0203381) against CESPE and/or any other party who may be found responsible for polluting Playa Hermosa.

#### A. Works commenced without an environmental impact authorization

30. Boardwalk construction commenced in March 2021 without the required permits. The dunes were removed and vegetation cleared prior to the filing of the Environmental Impact Statement with Semarnat. For this reason, along with the resulting citizen complaints, Profepa ordered a temporary shutdown and initiated an administrative proceeding against the construction company hired by Sedatu.

31. Municipal and federal officials have stated that the works under way in Playa Hermosa fall under the purview of the Semarnat Environmental Impact Authorization granted via communication DFBC/SGPA/UGA/DIRA/3826/11, on 8 November 2011, to Baja California's Ministry of Infrastructure and Urban Development (or SIDU, now known as SIDURT), for the implementation of the project known as "CONSTRUCTION OF EQUIPMENT AND INFRASTRUCTURE AND RESTORATION OF COASTAL VEGETATION TO IMPROVE THE ENSENADA MUNICIPAL BEACH (PLAYA HERMOSA), STAGE ONE" on a 124,061.15 m<sup>2</sup> site.

32. Under the abovementioned permit, should the permit holder propose to construct any works different from the ones specified therein, all such works shall be subject to individual environmental assessments. This did not happen.<sup>15</sup>

33. SIDURT should have granted title through a transfer of rights, in accordance with the provisions of the environmental permit in question, to the builder, Sedatu or the City of Ensenada. This too did not happen.<sup>16</sup>

34. Finally, SIDURT did not file compliance reports in relation to the conditions posed in the aforementioned authorization. In effect, it has yet to report that the site has been damaged, especially in relation to Playa Hermosa's coastal dunes. Verification of any of the facts recounted in the three preceding paragraphs would suffice to justify a decision by Semarnat to

<sup>15</sup> Semarnat, communication DFBC/SGPA/UGA/DIRA/3826/11 <<https://n9.cl/hhfem>>.

<sup>16</sup> Semarnat, communication Semarnat/UCPAST/UT/2469/2021 (30 August 2021) <<https://bit.ly/3sVapkY>>.

revoke the authorization in question.<sup>17</sup>

35. In addition, on 7 April 2021, the head of the Urban, Ecology and Environment Administration of the City of Ensenada issued, via communication No. 138/DPGA/2021, an environmental impact feasibility assessment to Sedatu concerning the implementation of project PCA-2001EP006 "CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA."<sup>18</sup> Although this agency is charged with prescribing technical measures and conditions, at no time did it mention the ban on building on dunes stipulated in Baja California's Ecological Management Program.

36. In conclusion, the project is in contravention of LGEEPA Articles 2 section I, 28 section XI and 29, Articles 35, paragraph Q, 55, 57, 58, 59 and 65 of the Regulation to the LGEEPA in relation to Environmental Impact Assessments.

#### B. Violation of the Federal Maritime Terrestrial Zone concession permit

37. On 15 October 2020, Semarnat granted a concession permit to the City of Ensenada for an area in the Zofemat covering 19,118.623 hectares, which includes Playa Hermosa.<sup>19</sup> Any construction work for the project in question would be distinct from the uses authorized in this Zofemat concession permit and, as such, would justify the revoking thereof by Semarnat.<sup>20</sup> Consequently, such construction work is in contravention of Articles 7 section IV and 63 of the General Law of National Assets (*Ley General de Bienes Nacionales*), as well as Articles 7 section III, 47 sections III and V and 52 of the Regulation on the Use and Exploitation of the Territorial Sea, Waterways, Beaches, the Federal Maritime and Terrestrial Zone and Lands Reclaimed from the Sea (*Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar*).

#### C. Barriers to openness and public participation

38. To date, only four meetings have been held with the participation of different governmental and civil society stakeholders, interested in Playa Hermosa, including the skaters' community. We the Submitters are of the view that there is no real willingness on the part of the authorities to join forces with the community to rectify the project's violations of the law. Thus, these meetings merely generate documents that offer the appearance of public consultations. Rather than working groups, as initially proposed, these are purely information meetings during which, to date, no clarity has been forthcoming regarding the project or the restoration and reforestation of the dunes removed by construction work on the site.<sup>21</sup>

<sup>17</sup> Semarnat, communication Semarnat/UCPAST/UT/2449/2021 (30 August 2021).

<sup>18</sup> Dirección de Administración Urbana y Ecología, communication 138/DPGA/2021 (7 April 2021) <<https://n9.cl/z75l6>>.

<sup>19</sup> Secretaría de Medio Ambiente y Recursos Naturales, *Diario Oficial de la Federación*, 15 October 2021 <[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5602816&fecha=15/10/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5602816&fecha=15/10/2020)>.

<sup>20</sup> Semarnat, Response to information request, folio 0001600181021 (16 June 2021) <<https://n9.cl/lzydg>>.

<sup>21</sup> Minutes <[REDACTED]>.

39. Despite the acknowledgement that coastal dunes were removed and vegetation cleared in Playa Hermosa, there still exists no concrete plan on how to ensure their restoration. That said, experts in coastal dynamics have put forward different opinions and methodologies in this regard. There is no clarity on who will assume the costs of repairing these damages.

40. The local and federal authorities should not permit the implementation of illegal works in Mexico, much less endorse them, however well-intentioned they may be. Such actions contravene LGEEPA Article 157 and Articles 6 and 7 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

#### D. Obstruction of access to justice

41. As mentioned in paragraphs 14 and 28, the Submitters filed citizen complaints with Profepa. However, not only has this environmental authority yet to make a ruling on the restoration of Playa Hermosa's coastal dunes and/or sanction the alleged offenders, it has not even informed the complainants of the actions taken to investigate the facts, thereby obstructing their right to expeditious justice.

42. In relation to the question of site clean-up, it's important to note that Profepa closed its regional offices in Ensenada in October of 2021. Consequently, it did not act automatically to take water samples at Playa Hermosa, make inspection visits to corroborate the proper functioning of the "El Gallo" treatment plant and/or investigate the facts as the agency charged with guaranteeing water quality in the terms of NOM-001-Semarnat-21. In effect, it failed to enforce LGEEPA Articles 85, 117 and 123, Articles 47, 88 Bis 1 paragraph 3, 95, 96 and 96 Bis 1 of the National Waters Act (*Ley de Aguas Nacionales*—LAN), and Articles 84 and 149 of the Regulation to the National Waters Act.

43. With its failure to investigate the facts in a timely fashion, order the immediate restoration of Playa Hermosa and address citizen complaints expeditiously, Profepa is in violation of LGEEPA Articles 189, 194, 195 and 202, REIA Article 65 and Escazú Agreement Article 8.

#### E. Violation of human rights arising from damage to the Playa Hermosa coastal ecosystem

44. Not only are the local and federal authorities bound to respect human rights, but it is requirement that they adopt all positive and concrete measures designed to satisfy and guarantee them, pursuant to their general duties, as established in Article 4 of the Political Constitution of the United Mexican States (CPEUM) and Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

45. Consequently, if, in their decision-making, the authorities do not use all means at their disposal to justify their actions on solid grounds, while observing the applicable laws and basing said actions on the best available information, that constitutes a violation of the rights to a healthy environment, health and the unhindered development of human personality. The families of Ensenada use Playa Hermosa as a place for family-friendly activities, to enjoy nature and for sports and recreation. Thus, as the City of Ensenada has insufficient green areas or public spaces for sports and recreation, damages to the area's coastal environment is detrimental to the population's human rights.

46. It is the duty of the municipal authorities to enforce environmental law stringently and to use the best available information and scientific advice in relation to the development of projects and construction work in sensitive environments such as Playa Hermosa. To that end, it's worth underlining that the City of Ensenada is home to the oldest and most prestigious Faculty of Marine Sciences in Mexico, one with broad experience in the management of coastal zones and coastal processes.

47. The "CONSTRUCTION OF PLAYA HERMOSA BOARDWALK AND SERVICES AREA" violates the human right to a healthy environment as it contravenes various provisions of environmental law. This is so even though it is an initiative implemented by the federal authorities at the request of the local authorities, which are severally responsible. Regarding the pollution from wastewater discharges, made in full awareness of the environmental damage to water quality at Playa Hermosa, actions are not being taken "to the extent possible" to avoid this outcome.

48. The discharge of untreated wastewater is a violation of the human right to health and sanitation, also enshrined in CPEUM Article 4. In effect, with the closing of the beach due to pollution, citizens and in particular youth and children lose their enjoyment of certain rights, especially the right to healthy recreation for their full development.

49. The pollution of Playa Hermosa, an iconic gathering place for Ensenada's families, constitutes a violation of their right to physical culture and sports, especially surfing, which is a part of the city's identity. With its failure to implement urgent sanitation and restoration measures, Mexico is failing in its obligation to promote, develop and encourage sports and recreational activities.

#### F. Actions prejudicial to climate change adaptation

50. In Mexico, rehabilitating and strengthening the resilience of beaches, coasts and the Zofemat are considered climate change adaptation priorities requiring urgent investments. And yet, by dredging the coastal dunes and, especially, by polluting Playa Hermosa, the competent local and federal authorities have achieved the opposite. To date, the City of Ensenada, as the funding applicant, Sedatu, as the executing agency of the boardwalk expansion project, ACAR Obras y Proyectos, as the construction company, CESPE, Profepa, Semarnat and the other authorities implicated in the facts recounted in Section I of this submission, have all been negligent in their enforcement and/or observance of environmental law in Mexico.

51. These actions contravene LGEEPA Article 2 section V and Articles 29 section IV, 30 section

XVIII and 82 section II of the General Climate Change Act (*Ley General de Cambio Climático—LGCC*).

## II. Procedural Requirements

52. As may be seen in the present submission, the Submitters communicated with the Parties and expressed their concerns regarding the threats posed by the construction project at Playa Hermosa.<sup>22</sup> Although two meetings took place with the competent federal and local authorities, no information was provided on subsequent actions, much less on the granting of proper environmental authorizations or the restoration of coastal dunes.<sup>23</sup>

53. Likewise, the Submitters pursued the remedies available to them under the applicable laws, such as filing citizen complaints about the impact on Playa Hermosa's coastal dunes<sup>24</sup> and the problem of water pollution.<sup>25</sup> The Submitters also requested public consultations in accordance with the official environmental impact assessment procedure.<sup>26</sup>

54. Finally, the submission is not drawn exclusively from mass media reports, as attest the documents and official communications presented herein in support of the Submitters' assertions.

<sup>22</sup> For example, see the request for a hearing, with the authorities and the expression of concern by the spokesperson of the Committee for Clean Beaches (26 May 2021) < [REDACTED] >.

<sup>23</sup> See paragraphs 18, 21, 23 and 37 [SIC: 38].

<sup>24</sup> Profepa, communication regarding unification of citizen complaints PFPA/O.7/2C.28.2/022-021. To see acknowledgment of receipt: < [REDACTED] >. In addition see paragraph 14.

<sup>25</sup> Profepa, folio 02003381 of 15 May 2022. To see acknowledgment of receipt: [shorturl.at/fxD79](https://shorturl.at/fxD79) . In addition, see paragraph 28 [SIC: 29].

<sup>26</sup> In addition, see paragraph 17.