

*[UNOFFICIAL TRANSLATION]*

# **Party Response of the Government of the United Mexican States**

## **Submission SEM-18-002** *(Metrobús Reforma)*

---

Filed with the Secretariat of the Commission for  
Environmental Cooperation under Article 14(3) of  
the North American Agreement on Environmental  
Cooperation

**SEMARNAT**  
SECRETARÍA DE  
MEDIO AMBIENTE  
Y RECURSOS NATURALES



## I. INTRODUCTION

On 2 February 2018, *Academia Mexicana de Derecho Ambiental, A.C.* and *La Voz de Polanco, A.C.*, two civil society organizations domiciled in the United Mexican States (the “Submitters”), filed a submission with the Secretariat of the Commission for Environmental Cooperation (the “Secretariat”) under Article 14 of the North American Agreement on Environmental Cooperation (NAAEC) asserting that Mexico is failing to effectively enforce its environmental law in connection with the construction of Line 7 of the Metrobús Reforma Mass Transit Corridor (“Metrobús Reforma”).

On 1 May 2018, the Secretariat found that submission SEM-18-002 (*Metrobús Reforma*) (the “submission”) met all the eligibility requirements of NAAEC Article 14(1) and merits a response from the Government of Mexico, pursuant to NAAEC Article 14(2), with respect to the effective enforcement of the following legislation in connection with the construction of Metrobús Reforma:

a) **Concerning the environmental impact assessment of Metrobús Reforma:**

- (i) Articles 44, 46 paragraphs III, IV(a), VIII and IX, 47, 48, 49, 50, 51, 52 bis, 53, 111, and 112 paragraph VIII of the Environmental Act for Land Protection in the Federal District (*Ley Ambiental de Protección a la Tierra en el Distrito Federal*—LAPT);
- (ii) Articles 6(C) and (D) paragraphs I and II (number 131), 14, 41, 44, 50, 52, 54, 62, and 63 of the Mexico City Environmental Impact and Risk Regulation (*Reglamento de Impacto y Riesgo de la Ciudad de México*—RIAR), and
- (iii) Article 7 paragraph V of the Federal District Transportation Act (*Ley de Movilidad del Distrito Federal*).

b) **Concerning public participation during the environmental impact assessment of Metrobús Reforma:**

- (i) Articles 6, 7, and 8 of the *Convention concerning Indigenous and Tribal Peoples in Independent Countries* of the International Labour Organization (Convention C169);
- (ii) LAPT Articles 13 and 85, and
- (iii) RIAR Articles 45, 53 paragraph III, 57, 58, and 60.

c) **Concerning management of vegetation and trees during the construction of**

**Metrobús Reforma, soil protection, and the conduct of activities in areas of environmental value (AVA) and/or protected natural areas adjacent to Metrobús Reforma:**

- (i) Article 134 paragraph II of the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA);
- (ii) LAPT Articles 88 Bis 1, 89 Bis, 93 Bis 1, and 105 paragraph II, and
- (iii) Federal District Environmental Standard NADF-001-RNAT-2015, Establishing the technical requirements and specifications to be met by physical persons, public or private legal persons, authorities and, in general, anyone who prunes, fells, transplants, or restores trees in the Federal District (“NADF-001”).

**d) Concerning management plans for hazardous waste, solid waste, and specially managed waste during the construction and operation of Metrobús Reforma:**

- (i) LGEEPA Articles 150 and 151 Bis paragraph III;
- (ii) Articles 7 paragraph IX, 9 paragraphs III, IV, V and VI, 31 paragraphs I to VII, and 42 of the General Waste Prevention and Management Act (*Ley General para la Prevención y Gestión Integral de los Residuos*—LGPGIR);
- (iii) Articles 16, 17, 20, 21, 24, 26, and 29 of the regulation to the LGPGIR;
- (iv) Articles 12 to 24 of the Federal District Solid Waste Act (*Ley de Residuos Sólidos del Distrito Federal*—LRS), and
- (v) Mexican Official Standard NOM-161-SEMARNAT-2011, Establishing the criteria for classifying waste as requiring special management and determining which shall be subject to a management plan; the list thereof, the procedure for inclusion or exclusion from said list, and the elements and procedures for the drafting of management plans (NOM-161), and Federal District Environmental Standard NADF-007-RNAT-2013, Establishing the classification and management specifications for construction and demolition waste in the Federal District (NADF-007).

**e) Concerning anticipated air emissions from Metrobús Reforma:**

- (i) LGEEPA Articles 109 Bis second paragraph and 110.

**f) Concerning land use changes on presumed forest land in relation to Metrobús Reforma:**

- (i) Article 117 of the General Sustainable Forestry Act (*Ley General de Desarrollo Forestal Sustentable*—LGDFS),<sup>1</sup> and
- (ii) Article 122 paragraph V of the regulation to the LGDFS.

The Government of the United Mexican States hereby issues this Party Response in accordance with NAAEC Article 14(3) and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, providing information requested by the Secretariat in its Article 14(1)(2) determination and referring to each and every one of the assertions made by the Submitters in their submission. It is requested that the Secretariat treat **Appendices “A,” “D,” and “F”** as confidential pursuant to NAAEC Article 39(1)(b), since these documents are classified as such under the applicable law of the United Mexican States.

## **II. PARTY RESPONSE IN RELATION TO ENVIRONMENTAL IMPACT ASSESSMENT OF THE METROBÚS REFORMA PROJECT**

### **A) Submitters’ assertions and Secretariat’s determination**

The Submitters contend that the Mexico City authorities failed to effectively enforce the environmental law in connection with the environmental impact assessment procedure for the Metrobús Reforma project. In addition, they assert that the Mexico City Department of Environment (*Secretaría de Medio Ambiente*—Sedema) did not possess or obtain sufficient information to order mitigation measures aimed at avoiding or reducing the negative effects of the Metrobús Reforma project on the environment. Finally, the Submitters contend that Sedema did not consider all the environmental impacts of the project as required by the LAPT.

The Secretariat, in its Article 14(1)(2) determination, requested a response from the Government of Mexico in regard to the effective enforcement of LAPT Articles 44, 46 paragraphs III, IV(a), VIII and IX, 47, 48, 49, 50, 51, 52 bis, 53, 111, and 112 paragraph VIII; RIAR Articles 6(C) and (D) paragraphs I and II, 14, 41, 44, 50, 52, 54, 62, and 63, and Article 7 paragraph V of the Federal District Transportation Act in relation to the matters covered by this section.

### **B) Party Response**

---

<sup>1</sup> The assertions in the submission were formulated on the basis of the version of the LGDFS published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 25 February 2003. However, between the date of the submission and the date of this Party Response, the LGDFS was repealed by an order published in the DOF on 5 June 2018, whereby a new LGDFS was enacted. This Party Response refers to the repealed version of the LGDFS.

- a. Effective enforcement of LAPT Articles 44, 46 paragraphs III, IV(a), VIII and IX, 47, 48, 49, 52 bis, 53, 111, and 112, and RIAR Articles 6(C) and (D) paragraphs I and II (number 131), 14, 41, 44, 50, 52, 54, 62, and 63

In relation to the effective enforcement of the environmental law corresponding to this section, on 30 November 2016, Sedema granted conditional environmental impact approval (*autorización de impacto ambiental*—AIA) to the Metrobús Reforma project in decision no. SEDEMA/DEIA/014363/2016 (the “AIA”), a copy of which is attached to this Party Response as **Appendix “A.”**

The AIA was issued as file no. FEIA-ME-1588/2016, “Construction of the Metrobús Line 7 Corridor, to run on Avenida Paseo de la Reforma between Indios Verdes and Fuente de Petróleos, with influence on the boroughs of Gustavo A. Madero, Cuauhtémoc, and Miguel Hidalgo.” This document was issued further to an application from the Mexico City Department of Works and Services (*Secretaría de Obras y Servicios*—Sobse) for specific modality environmental impact approval on 24 August 2016 in accordance with LAPT Articles 44 paragraph II and 46 paragraph IV(a) as well as RIAR Articles 41 and 44. The AIA adheres to the environmental law applicable and in force in Mexico City, and in particular to LAPT Article 53 and RIAR Articles 3 paragraph VI and 67 paragraph II, which provide for the granting of conditional environmental impact approval.

The Submitters contend that in issuing the AIA, Sedema did not consider all the environmental impacts, as required by the LAPT. However, the environmental impact assessment procedure in Mexico City is carried out at the request of the parties wishing to engage in a program, work, or activity covered by any provision of the LAPT (Article 46), and the competent authority is then responsible for assessing the environmental effects of the program, work, or activity in question, based on the information submitted by the applicant. The application must include the following:

- **Description of the project or activity to be carried out**, stressing the nature and characteristics of the project.
- **Breakdown of the project or activity into its component parts**, providing a detailed description of each of the four project phases: site preparation, construction, operation, and abandonment.
- **Description of the status of the environment prior to the work or activity in question**, consisting of a characterization of the physical environment, including its biotic and abiotic components, supported by both theoretical considerations and field work, including the social and economic environment of the area where the project is to be carried out.
- **Scope of application of the environmental impact statement**, consisting of the

intended scope of the program, work, or activity to be carried out as well as its influence on AVAs or protected natural areas and its relationship to the zoning regulations of Mexico City.

- **Impact identification**, consisting of presentation, in a logical, measurable, and quantifiable manner, of the nature and expected environmental impacts of the project, work, or activity as well as the potential cumulative effect of all the impacts identified.
- **Alternatives**, consisting of offering the authority a range of options for carrying out the program, work, or activity in question, so that the option causing the least severe environmental impacts can be identified.
- **Identification of mitigation measures**, consisting of the proposed implementation of logical and viable measures to mitigate the environmental impacts.

The LAPT articles adduced by the Submitters for which the Secretariat requested a response from the Government of Mexico do not indicate the existence of a specific catalogue of environmental impacts that Sedema must consider when granting environmental impact approval. On the contrary, LAPT Article 47 paragraph V provides that parties wishing to carry out a project, work, or activity subject to the environmental impact assessment process must, in their environmental impact study, identify, describe, and assess the corresponding environmental impacts to be anticipated during the various phases thereof, and determine the environmental indicators of the project, which are then duly verified and noted by Sedema before it can issue a technically sound and legally well-founded environmental impact decision. LAPT Article 52 Bis provides that “in order to obtain further information in support of its assessment and, as applicable, take note of the content of the environmental impact studies in their various modalities, or the environmental harm assessment, [Sedema]...may conduct technical inspections of the site where the program, work, or activity is to be carried out.” Although the inspection power established by LAPT Article 52 Bis and RIAR Article 52 is discretionary, Sedema did in fact conduct such inspections before issuing the approval addressed by the submission, as appears in the AIA.

In view of the nature of the Metrobús Reforma project, as appears in the AIA (pp. 10–21), Sedema assessed various anticipated environmental impacts of the project and ordered prevention and mitigation measures, compliance with which was in addition verified by the Mexico City Attorney for Environmental Protection and Zoning (*Procuraduría Ambiental y del Ordenamiento Territorial*—PAOT). This may be seen in file no. PAOT-2015-AO-21-SPA-9, under which the PAOT performed 26 physical inspections consisting of site visits for the purpose of ascertaining compliance with the environmental and zoning-related legal provisions as well as any acts, facts, or omissions that cause or could cause ecological disequilibrium or serious environmental harm or deterioration. Among the prevention and mitigation measures verified by the PAOT were measures related to tree felling, waste generation, and noise emissions. The PAOT report of its activities in connection with the Metrobús Reforma project is attached to this Party Response as **Appendix “B.”**

It is important to emphasize that LAPT Article 48 is not applicable to the matters raised by

the submission because the Metrobús Reforma project is not taking place within an AVA or a protected natural area. Instead, it is LAPT Article 46 paragraph IV(a) that applies to the matter at hand. Neither are RIAR Articles 6(C) paragraphs I and II and 14, nor RIAR Article 6(D) paragraphs I and II (number 131) applicable, since the Metrobús Reforma project is not adjacent to a protected natural area but rather an AVA, as is explained hereinbelow.

Furthermore, it is important to inform the Submitters that RIAR Article 63 does not apply to the matters raised in the submission because the construction of Metrobús Reforma does not qualify as a high-risk work or activity under RIAR Article 6(K).

**b. Effective enforcement of LAPT Articles 49, 50, and 51 and RIAR Article 50**

Since these articles relate to public participation in the environmental impact assessment process, the effective enforcement thereof is addressed in section III(c) of this Party Response.

**c. Effective enforcement of LAPT Articles 111 and 112**

LAPT Articles 111 and 112, cited by the Submitters, for which the Secretariat requests a response, are found in chapter V, “Soil Conservation and Sustainable Use,” of Title IV, “Protection, Restoration, and Sustainable Use of Natural Resources,” and provide as follows:

**Article 111.-** For the conservation, restoration, protection, and sustainable use of soils in the territory of the Federal District, the following criteria shall be considered:

- I.* The use of soil must be compatible with its natural attributes, at all times preserving the Earth’s natural resources and refraining from altering the equilibrium of ecosystems.
- II.* Public or private works that may, in and of themselves, cause soil deterioration must include equivalent measures to regenerate, recover, and restore its natural attributes.
- III.* The necessity of preventing or reducing soil erosion, deterioration of soil physical, chemical, or biological properties, and/or loss of natural vegetation.
- IV.* In areas affected by soil degradation, salinization, or desertification, the regeneration, recovery, and rehabilitation measures necessary for their restoration must be taken.
- V.* The accumulation or dumping of waste constitutes a source of contamination that alters soil biological processes.
- VI.* Practices causing alterations of the soil and interfering with its use or enjoyment, or causing health risks or problems, shall be avoided.

**Article 112.-** The foregoing criteria shall be considered in the context of:



*I.* Support for agricultural activities granted directly or indirectly by the entities of the Public Administration of the Federal District, in order that such activities promote the progressive incorporation of crops compatible with the conservation of ecological equilibrium and the restoration of ecosystems.

*I Bis.* The formulation and development of programs establishing mechanisms of payment for the protection, conservation, or expansion of environmental services and for activities linked to equitable and sustainable rural development on conservation land.

*II.* The authorization of residential subdivisions and human settlements in general.

*III.* The amendment and drafting of urban development plans.

*IV.* The establishment of uses and reserves in urban development plans, as well as in the restoration and conservation measures of population centers.

*V.* The provisions, plans, and technical guidelines for soil conservation, protection, and restoration in agricultural, mining, forestry, and water-related activities.

*VI.* The exploration, exploitation, extraction, and/or use of materials or substances not reserved to the Federation, as well as excavation and any other activities that alter forest resources and vegetation.

*VII.* The formulation of the ecological zoning plan.

*VIII.* Environmental impact assessment of any works or projects that may be submitted for the consideration of the Department.

It is evident from a reading of the transcribed provisions that LAPT Article 111 establishes a catalogue of criteria to be observed in the conservation, restoration, protection, and sustainable use of soil in the territory of the Federal District and that the provisions of this article would be applicable to the matter raised in the submission uniquely by virtue of LAPT Article 112 paragraph VIII, which requires that these criteria be observed in the context of environmental impact assessment of projects submitted for the consideration of Sedema. Nevertheless, these provisions are not applicable to the Metrobús Reforma project because it is being carried out on land that does not provide environmental services and is not subject to special regulation as “conservation land.” The land on which Metrobús Reforma was built qualifies as “urban land,” defined by LAPT Article 5 as land “classified by the General Urban Development Plan as such, by virtue of the presence on it of infrastructure, equipment, and services, and which is not classified as conservation land under the General Ecological Zoning Plan of the Federal District, except for the urban cores of rural settlements.” That is, Metrobús Reforma was developed on an “urbanized area,” defined by RIAR Article 3 as an “area of land located within a population centre or rural settlement that is used for purposes of habitation, production, business, or any other type of community service and that forms a part of the built environment and street grid, including historic districts and land which, although not built upon, has been occupied by road corridors and urbanization, with the approval of the competent authority and in accordance with the urban development and



ecological zoning plans.”

In view of the foregoing, the provisions of LAPT Articles 111 and 112 are not applicable to the matter raised in the submission because, as urbanized land on which the Metrobús Reforma project was developed, this land was not subject to conservation, restoration, protection, or sustainable use.

**d. Effective enforcement of Article 7 paragraph V of the Transportation Act**

The Transportation Act is local legislation of Mexico City whose object is “to establish the basis and guidelines for planning, regulating, and managing the transportation of persons and goods.” Article 7 paragraph V of this act, cited in the submission and for which the Secretariat requested a response from the Government of Mexico, establishes the quality principles that the Public Administration of Mexico City must observe when developing public policies and programs, ensuring that “the components of the transportation system exhibit the criteria and properties necessary to fulfill their function, produce the least environmental harm, offer an appropriate and comfortable space for persons, and are in good condition, hygienic, safe, and regularly maintained, in order to offer an adequate travel experience.”

A reading of Article 7 paragraph V of the Transportation Act indicates that its object is to establish the criteria that must be observed by the Mexico City authorities in their regulation of matters relating to transportation in Mexico City, and that its primary purpose is not environmental protection. Therefore, it does not conform to the NAAEC Article 45(2) definition of environmental law and should not be given consideration within the NAAEC submissions on enforcement matters (SEM) process. For this reason, the Government of Mexico offers no response to this assertion.

**III. PARTY RESPONSE IN RELATION TO PUBLIC PARTICIPATION  
DURING THE ENVIRONMENTAL IMPACT ASSESSMENT OF THE  
METROBÚS REFORMA PROJECT**

**a. Effective enforcement of Articles 6, 7, and 8 of Convention C169**

**A) Submitters’ assertions and Secretariat’s determination**

The Submitters assert not only that Mexico City is one of the world’s largest cities, but also that its population is multicultural, since there is an Indigenous population living in it, which was not consulted by the government of Mexico City prior to approval of work on the Metrobús Reforma project. In addition, the Submitters contend that the *Academia Mexicana de Derecho Ambiental, A.C.*, one of the Submitters, “demonstrated the presence of Indigenous groups who use public transit in Mexico City by consulting the *Catálogo de Colonias y Pueblos Originarios del Distrito Federal 2010*, a document which disaggregates the geoelectoral integration of 1,775 neighborhoods and 40 Indigenous Peoples.”

**B) Party Response**

Convention C169 is not a law or regulation whose primary purpose is the protection of the

environment or the prevention of a danger to human life or health through the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants; the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas. That is, Convention C169 does not meet the NAAEC definition of environmental law and therefore cannot be included in the SEM process. In addition, it is important to emphasize that neither Convention C169 nor those of its provisions cited by the Submitters are applicable to the Metrobús Reforma project, since the construction and operation thereof did not occur in zones that are owned or inhabited by Indigenous communities, and therefore did not cause direct harm to such communities. Thus, the right to be consulted under Convention C169 is not applicable in this connection.

In view of the foregoing, the Government of Mexico offers no information about the effective enforcement of Convention C169 in relation to the Metrobús Reforma project.

b. **Effective enforcement of LAPT Articles 13 and 85 paragraph VI**

The provisions cited by the Submitters, for which the Secretariat requested a response from the Government of Mexico, provide as follows:

**Article 13.-** The Mexico City authorities are obligated to:

- I. Promote public participation in environmental management.
- II. Promote protection of the environment and human health.
- III. Coordinate actions contributing to increased resilience in matters governed by this Act.
- IV. Develop and make efficient use of natural resources.
- V. Repair the harm caused, should any complementary activities impact the environment and the future availability of natural resources.

**Article 85.** For the protection, restoration, preservation, and sustainable use of biodiversity, natural resources, and conservation land as well as the establishment, rehabilitation, protection, and preservation of protected natural areas, the following criteria, at least, shall be considered:

...

- VI. The participation of residents, communities, Indigenous Peoples, and the general public in programs and activities for the establishment, stewardship, and surveillance of protected natural areas shall be promoted.

On the one hand, LAPT Article 13 does not fit the NAAEC definition of environmental law, and therefore cannot be given consideration within the SEM process. This provision merely imposes generic environmental management obligations on the environmental authorities of

Mexico City that are only fulfilled in conjunction with other specific powers under the LAPT.

On the other hand, LAPT Article 85 establishes, as a criterion for the establishment, rehabilitation, protection, and preservation of protected natural areas, that the participation by residents, communities, Indigenous Peoples, and the general public in **programs and activities for the establishment, stewardship, and surveillance of protected natural areas** be promoted. Without taking up the matter of whether this provision qualifies as environmental law under the NAAEC, the Government of Mexico wishes to emphasize that it bears no relationship to the matters raised by the submission. The Metrobús Reforma project does not involve any protected natural area, nor do the acts of the Mexico City environmental authorities in regard to Metrobús Reforma relate in any way to the establishment or management of a protected natural area in Mexico City.

In addition, matters relating to public participation in the environmental impact assessment process for the Metrobús Reforma project are not governed by the provisions mentioned but by LAPT Articles 49, 50, and 51, which are addressed in section III(c) below.

c. **Effective enforcement of RIAR Articles 45, 49, 50, 51, 53 paragraph III, 57, 58, and 60**

The Submitters contend that the LAPT establishes as part of the environmental impact assessment procedure that the file be made available for public consultation in accordance with the principles of the Civic Participation Act (*Ley de Participación Ciudadana*—LPC). They assert that Sedema failed to carry out this consultation when approving the Metrobús Reforma project. In addition, the Submitters state that the government of Mexico City only conducted “a survey on 20–22 June [2017], six months after issuing the AIA,” in order to “regularize, post hoc, this failure to enforce the environmental law.”

For its part, the Secretariat requested a response from the Government of Mexico in relation to RIAR Articles 45, 53 paragraph III, 57, 58, and 60 with respect to public participation in the environmental impact assessment process.

In this section, the Government of Mexico provides a response with regard to the articles requested by the Secretariat. However, this section also addresses the effective enforcement of RIAR Article 50 in that, irrespective of its inclusion in the environmental laws in regard to which a response is requested in section II of this Party Response, it contains public participation-related provisions that are relevant to this section. In addition, it should be noted that public participation in the environmental impact assessment process for the Metrobús Reforma project is governed by LAPT Articles 49, 50, and 51, which the Secretariat did not include as part of this section on civic participation during the environmental impact assessment process, but which are addressed here in order to organize the response by themes, as suggested by the Secretariat in its Article 14(1)(2) determination.

Throughout the environmental impact assessment process for the Metrobús Reforma project, the competent authorities of the government of Mexico City strictly adhered to the civic participation and consultation-related provisions of the LAPT and the RIAR to analyze the project’s environmental and social impacts, considering all opinions expressed by citizens to have more information with which to order mitigation, compensation, and restoration measures for natural resources in the project development area, all of which was included in

the AIA.

Public consultations relating to the environmental impact assessment process are carried out in accordance with the provisions of the LPC, the LAPT, and the RIAR. In this process, Sedema has the power to order any relevant measures and operating mechanisms for the holding of the consultation (LAPT Article 50). The public consultation and community participation-related measures ordered by Sedema are consistent with the provisions of the RIAR, and Sedema faithfully adhered to these measures during the environmental impact assessment of the Metrobús Reforma project. These measures include:

- **Publication of a summary of the environmental impact study in a national newspaper (LAPT Article 51 and RIAR Article 45).**

This publication occurred on 2 September 2016 on page 7A of the daily *Sol de México*, as evidenced by clause 4 of the AIA. This publication met all the requirements of RIAR Article 45.

- **Once the environmental impact and risk approval application is submitted, the corresponding file must be opened. It must contain the environmental impact statement and its appendices and be made available to the public for consultation (LAPT Article 49 and RIAR Articles 46, 57, and 58 first paragraph).**

The file opened in relation to the environmental impact statement for the Metrobús Reforma project was available to the public for consultation at the offices of the Environmental Regulation Branch (*Dirección General de Regulación Ambiental*) of Sedema, in compliance with the relevant provisions and with the central objective of identifying the needs and demands of citizens. However, Sedema **did not receive any comments or observations** from citizens during the environmental impact assessment of the Metrobús Reforma project.

- **Publication of a list of environmental impact statements subject to assessment (RIAR Article 58 second paragraph).**

The Environmental Regulation Branch of Sedema publishes, both on its website (<https://www.sedema.cdmx.gob.mx/servicios/servicio/tramites-de-impacto-ambiental>) and at its filing office (*oficialía de partes*), the list of environmental impact statements whose assessment is in progress. This occurred with the environmental impact statement for the Metrobús Reforma project, as evidenced by the information presented by Sedema in file no. SEDEMA/DGRA/DEIA/06928/2018, attached to this Party

## Response as **Appendix “C.”**<sup>2</sup>

As established in this Party Response, during the environmental impact assessment and approval process for the Metrobús Reforma project, Sedema adhered to and strictly applied the public participation and consultation processes that it had established for that procedure in the exercise of its powers under the LAPT and the RIAR. The fact that citizens did not make use of these mechanisms or exercise their right to participate in the environmental impact assessment procedure for Metrobús Reforma in no way implies that Sedema failed to effectively enforce the corresponding legislation.

### **IV. PARTY RESPONSE IN RELATION TO THE MANAGEMENT OF VEGETATION AND TREES DURING THE CONSTRUCTION OF THE METROBÚS REFORMA PROJECT, SOIL PROTECTION, AND ACTIVITIES CARRIED OUT IN THE AVA ADJACENT TO THE PROJECT**

#### **A) Submitters’ assertions and Secretariat’s determination**

The Submitters assert that the Mexico City authorities approved the felling of 640 (six hundred forty) trees in the absence of a study justifying this measure.

For its part, the Secretariat, in its Article 14(1)(2) determination, requested a response from the Government of Mexico in regard to the effective enforcement of LGEEPA Article 134 paragraph II; LAPT Articles 88 Bis 1, 89 Bis, 93 Bis 1, and 105 paragraph II, and NADF-001 in relation to the matters covered by this section.

#### **B) Party Response**

- a. Effective enforcement of **LAPT Articles 88 Bis 1, 89 Bis, 93 Bis 1, and 105 paragraph III** in relation to activities carried out in the AVA and/or PNA adjacent to the Metrobús Reforma project

The provisions relating to this section read as follows:

**Article 88 bis 1.** In parks and gardens, landscaped or treed plazas, areas with any vegetation along public roads, tree groves, plant beds, ravines, areas of environmental value, and protected natural areas, the following are prohibited:

- I. The construction of buildings and any other work or activity having that as its purpose.
- II. Land use changes.
- III. Removal of earth and/or vegetation, wire fencing, and other fencing, except as carried out or authorized by the competent authorities for the maintenance or improvement of the area in question.

---

<sup>2</sup> Pp. 20–1.

- IV. Dumping of rubble or any other material from buildings that affects or could affect natural resources in the area.

**Article 89 bis.** In any case, authorization of felling, pruning, or transplanting of trees on conservation land, areas of environmental value, or protected natural areas shall be limited to phytosanitary and fire prevention measures.

**Article 93 Bis 1.** In protected natural areas, activities consisting of protection, preservation, restoration, afforestation, reforestation, sustainable and controlled use of natural resources, research, environmental education, recreation, and ecotourism may be carried out. The corresponding management plan shall establish which of these activities are permitted in accordance with the protecting natural area category specifications established by this law and any other applicable legal provisions.

In protected natural areas, the following are prohibited:

- I. The establishment of irregular human settlements and new or expanded regular human settlements.
- II. Activities affecting the ecosystems of the area as per the Act, its Regulation, the Mexican official standards, the environmental standards of the Federal District, the executive order establishing the area, its management plan, or the applicable environmental impact assessment.
- III. High-risk activities.
- IV. Pollutant emissions into air, water, soil, or subsoil as well as dumping or disposal of all manner of waste, and the use of pollution control equipment without the corresponding authorization.
- V. The removal of soil or of subsoil materials for any other than strictly scientific purposes.
- VI. Interruption of, or interference with, the local hydrological system.
- VII. Hunting and/or illicit exploitation of wildlife species.
- VIII. Any other activities contemplated in the executive order establishing the area or the applicable legal provisions.

**Article 105.** For the sustainable use of waters under the jurisdiction of the Federal District, as well as the appropriate use of the water used in population centers, the following criteria shall be considered:

...

- III. To preserve the integrity and equilibrium of the natural features involved in the water cycle, the protection of forest



soils and areas shall be considered along with the preservation of minimum flow rates and natural sources of watercourses, in order to preserve the recharge capacity of the aquifers.

While the provisions for which the Secretariat requested a response from the Government of Mexico qualify as environmental law under the NAAEC (insofar as these provisions apply to protected natural areas, exclusively), these provisions **are not applicable to the Metrobús Reforma project**. This is because the Metrobús Reforma project is not being developed within a wooded area or a protected natural area. On the contrary, this project was built and is being operated exclusively in urbanized areas, without jeopardizing the integrity of any protected natural area. The Metrobús Reforma project is merely **adjacent to** a portion of the First Section of Bosque de Chapultepec. In this regard, it must be clarified that according to the fifth recital<sup>3</sup> of the *Executive order declaring Bosque de Chapultepec an Area of Environmental Value of the Federal District*, published 2 December 2003 in the Official Gazette of the Government of the Federal District (*Gaceta Oficial del Gobierno del Distrito Federal*), as it was then called, even though part of Bosque de Chapultepec was declared a protected natural area under local jurisdiction in an executive order published in the DOF on 10 June 1992, that order refers solely to an area contained within the Third Section of Bosque de Chapultepec and not to the entirety—i.e., all sections—of what is known today as “Bosque de Chapultepec.”

This becomes important in that the portion of Bosque de Chapultepec adjacent to Metrobús Reforma—that is, the First Section—is not a protected natural area but rather an area of environmental value (Bosque de Chapultepec Area of Environmental Value), declared as such by an order published in the Official Gazette of the Government of the Federal District on 2 December 2003, including the three sections making up Bosque de Chapultepec.

Therefore, the approval relating to impact on trees issued by Sedema in file no. SEDEMA/DGRA/DEIA/004234/2017 (the “Trees Decision”), a copy of which is attached to this Party Response as **Appendix “D,”** does not authorize the cutting, felling, or transplanting of trees located within Bosque de Chapultepec. The Trees Decision refers exclusively to specimens located outside of the Bosque de Chapultepec AVA, since Metrobús Reforma is routed along existing road corridors (Paseo de la Reforma and Calzada de los Misterios).

**b. Effective enforcement of NADF-001**

The Government of Mexico is of the view that the Submitters’ assertions related to the effective enforcement of NADF-001 do not qualify as environmental law under the NAAEC. Article 45(2)(a)(iii) stipulates that “environmental law” means “any statute or regulation of a Party ... the primary purpose of which is the protection of the environment ... through ... the protection of **wild flora or fauna**...” NADF-001 was drafted in relation to arboriculture, which is the science and practice of growing, caring for, and managing urban trees. Thus,

---

<sup>3</sup> “FIVE. That by means of the orders published 10 June 1992 in the Official Gazette of the Federation, an area of 141-60-46.07 hectares of public property and 85-67-41.20 hectares expropriated in favor of the Department of the Federal District, located in the borough of Miguel Hidalgo, in the area known as the Third Section of Bosque de Chapultepec, was declared a protected natural area under local jurisdiction, and categorized as an area subject to ecological conservation.”



NADF-001 refers to the appropriate management (planting, pruning, felling, transplanting) of urban trees in Mexico City, which cannot be considered wild flora. The purpose of NADF-001 is not the management of wild flora or flora subject to special protection.

This is evident from a reading of the introduction to NADF-001, which delineates the reasons why the standard was issued, including the afforestation of urban areas and the criteria to be met in order for such afforestation to be adequate from an environmental perspective and secure from a civil protection perspective, as well as compatible and suitable in relation to urban infrastructure. Another purpose of NADF-001 is to establish the technical requirements and specifications to be observed by anyone engaged in pruning, felling, transplanting, and/or restoration of trees in Mexico City. NADF-001 does not apply to trees subject to a special protection regime such as an AVA or a protected natural area.

Along similar lines, and given that the Metrobús Reforma project does not jeopardize forest species subject to special protection or found within AVAs or protected natural areas, and that the AIA contemplates impacts on urban trees, Sedema issued the Trees Decision, which adheres to provisions 7.4.4, 9, 9.1, and 9.2 of NADF-001, ordering suitable measures of redress and compensation for the environmental impact caused by Metrobús Reforma. The provisions cited by the Submitters are not environmental law under the NAAEC and therefore may not be included in the SEM process; however, since the Trees Decision flows from the AIA, this Party Response presents the principal measures prescribed by that decision, in order to achieve the greatest possible transparency and dissemination of information about the Metrobús Reforma project for the benefit of the Submitters and the North American public.

The Trees Decision was issued on the basis of LAPT Articles 53 (penultimate and last paragraphs), 88, and 119, as well as RIAR Article 69. The compensatory measures relating to trees will be issued on the basis of the guidelines set forth in NADF-001; specifically, sections 7.4.4, 9, 9.1, and 9.2 thereof. Prior to the issuance of the AIA and the Trees Decision, Sedema exercised its powers of verification with respect to the environmental information contained in file no. DEIA-ME-1588/2016, with a view to ensuring compliance with LAPT Article 18, the purpose being to ensure that each stipulation of the AIA and the Trees Decision guarantees the maintenance and conservation of biodiversity as well as its continuity and integrity. The following are some key stipulations of the Trees Decision:

- As a consequence of the authorization to fell 56 (fifty-six) trees, the replacement planting of 280 (two hundred eighty) trees was ordered, as follows: 112 (one hundred twelve) 6-meter-high trees and 168 (one hundred sixty-eight) 5-meter-high trees, in accordance with LAPT Articles 69, 70 paragraph IV, 89, 90 penultimate paragraph, 119, and 120, as well as RIAR Articles 62 paragraph III, 67 paragraph II, 69, 79, and 88, and sections 9 and 9.1 of NADF-001.
- As a consequence of the authorization to fell 302 (three hundred two) trees, monetary compensation of 206,627 Mexico City payment units (*unidades de cuenta*) was ordered. At a rate of \$75.49 pesos per unit, the total compensation was \$15,598,272.33 pesos, in accordance with LAPT Articles 119 and 120 and section

## 9.2 of NADF-001.

The authorization to fell trees with monetary compensation was based on a report on the trees existing in the area, noting that these were deformed, diseased, or dead specimens that were no longer providing environmental services to Mexico City.

As indicated in clause 7 of the AIA, and in strict observance of section 5 of NADF-001 and LAPT Article 18, and prior to issuing the AIA, Sedema conducted technical site inspection no. DEIA-RT-040-2016 along the road corridors where the Metrobús Reforma project is being developed. The PAOT reports that it verified the existence of trees in accordance with the forest survey and determined that 8 (eight) trees were suitable for transplanting. It recorded 63 (sixty-three) stumps and 618 (six hundred eighteen) trees to be felled of the 640 (six hundred forty) trees and 49 (forty-nine) stumps reported by Sobse. It then issued the Trees Decision, whose third point modified the number of trees to be felled according to the AIA, specifying the removal of stumps and establishing the following specifications regarding transplants:

<b>Trees felled</b>	<b>Compensation</b>
363 trees to be felled	Monetary compensation of P\$15,598,272.23 to the Public Environment Fund
	294 trees to be replaced with no planting sites specified
<b>Pruning</b>	<b>Observation</b>
12 trees pruned	Not to exceed one-fourth of the foliage
<b>Removal</b>	
23 stumps	
<b>Transplants</b>	<b>Observation</b>
5 trees	Two years of tree care necessary to ensure survival

The PAOT, in coordination with Sobse and prior to the commencement of work, took inventory of the trees that would be affected by the construction of the Metrobús Reforma project. This inventory was included in environmental protection report no. RPA-14-2017, titled *Convalidación del Levantamiento Forestal relacionado con el Proyecto de*

*Construcción del Corredor Vial de la Línea 7 de Metrobús*, which is attached to this Party Response as **Appendix “E.”** During this site inspection, the PAOT observed a total of 137 (one hundred thirty-seven) felled trees of the 363 (three hundred sixty-three) authorized by Sedema.

In relation to green space, the AIA approved an impact on 2,439.43 m<sup>2</sup> (two thousand four hundred thirty-nine point forty-three square meters) of permanent green space and ordered the restoration of an equivalent area, as prescribed by LAPT Article 88 bis 2. On 11 June 2018, the PAOT conducted a site inspection along the route of the Metrobús Reforma project. It observed and documented an impact on green space of only 924.28 m<sup>2</sup> (nine hundred twenty-four point twenty-eight square meters) at the following points:

LOCATION OF AFFECTED AREA	AFFECTED AREA (m <sup>2</sup> )
Calzada de los Misterios between Fray Juan de Zumárraga and Garrido	66.51
Calzada de los Misterios between Garrido and Ricarte	165.12
Calzada de los Misterios between Ricarte and Gabriel Hernández	223.11
Calzada de los Misterios between Gabriel Hernández and Avenida de la Fortuna	
Calzada de los Misterios between Avenida de la Fortuna and Fortaleza	40.5
Euzkarro station (known as “Avenida Talismán”)	29.11
Necaxa station	20.16
Excélsior station	29.3
Clave station	31.5

Misterios station	33.26
Between Verdi and Beethoven	57.5
Juventino Rosas station (known as “MDO Beethoven”)	48.1
Retorno Calzada de Guadalupe	110.21
Carril Peralvillo	70.1
<b>TOTAL</b>	<b>924.58</b>

**c. Effective enforcement of LGEEPA Article 134 paragraph II**

The response in relation to this provision is presented in section V, since it relates to the prevention and control of waste contamination of soil.

**V. PARTY RESPONSE IN RELATION TO HAZARDOUS WASTE, SOLID WASTE, AND SPECIALLY MANAGED WASTE DURING THE CONSTRUCTION AND OPERATION OF THE METROBÚS REFORMA PROJECT**

**A) Submitters’ assertions and Secretariat’s determination**

The Submitters assert waste-related failures to enforce environmental law, [claiming] that the environmental impact assessment did not make a proper study of the impacts of hazardous waste, specially managed (construction) waste, and urban solid waste, and because Sedema [allegedly] failed to require the developer to produce an estimate of waste generation yet allowed it to commence construction on Metrobús Reforma without the corresponding waste management plan.

The Secretariat, in its Article 14(1)(2) determination, requested a response from the Government of Mexico in relation to LGEEPA Articles 150 and 151 Bis paragraph III; LGPGIR Article 7 paragraph IX, 9 paragraphs III, IV, V and VI, 31 paragraphs I to VII, and 42; Articles 16, 17, 20, 21, 24, 26, and 29 of the regulation to the LGPGIR; LRS Articles 12 to 24, and NADF-007.

**B) Party Response**

Contrary to what the Submitters assert, Sedema, based on Condition 1.0 of the AIA and by means of administrative decision no. SEDEMA/DGRA/DEIA/008469/2017 of 14 July 2017,

a copy of which is attached to this Party Response as **Appendix “F,”** approved the *Construction and Demolition Waste Management Plan* (the “Management Plan”), indicating the volume to be generated in cubic meters from demolition and site preparation as well as from excavation and construction of the Metrobús Reforma project in accordance with NADF-007 and NOM-161. It made the project conditional on separation of generated waste according to the classification indicated below (A, B, C, D, and F) and on temporary storage thereof in that manner. Proof in the form of photographic records was required. The developer submitted the following information:

Waste classification	Volume generated (m <sup>2</sup> )		Storage site	Site address
	Demolition	Site preparation, excavation, and construction		
<b>A</b> From hydraulic concrete and mortar	9,898.48		Concretos Recicladados, S.A. de C.V.	Avenida del Árbol No. 106, Colonia El Triángulo, Delegación Iztapalapa
<b>B</b> Mixed				
<b>C</b> From cutting of asphaltic concrete	25,596.40		El Arenal	Camino a Ayotzingo S/N, Santa Catarina Ayotzingo, Municipio de Chalco, Estado de México
<b>D</b> Excavation waste		31,094.09		
<b>Total (m<sup>2</sup>)</b>	<b>34,494.89</b>	<b>31,094.09</b>		<b>65,588.98</b>

In addition, Sedema approved the Management Plan and, based on sections 8.1, 8.2, 8.3, and 8.4 of NADF-007, imposed the following reporting obligations on the developer:

- Make quarterly submissions of waste delivery, shipping, and receiving manifests as stipulated in the Management Plan.
- Request approval from Sedema to change authorized waste recycling and/or final disposal sites.
- Inform Sedema of measures implemented to comply with NADF-007, attaching documentary evidence of the management and disposal of construction waste generated during the Metrobús Reforma project.

The Submitters cite LRS Articles 12 to 24, of which only Article 21 and Article 23 paragraph I are relevant to the matters raised by the submission. The rest of the articles refer to matters such as programs relating to sanitation service, provision of sanitation service, economic incentives for waste reduction, waste exchange systems and mechanisms, etc. As for Article

21, it establishes the generators' ownership of waste they generate and their responsibility for its management. In addition, Article 23 paragraph I establishes the obligation to implement management plans for specially managed waste generated during their production processes.

The environmental impact assessment procedure addressed by the submission concerns the construction of Metrobús Reforma as per file no. DEIA-ME-1588/2016. The environmental impact assessment of the construction of Metrobús Reforma correctly assessed the waste generation associated with the work. In this regard, the Mexico City authorities made the AIA conditional on the submission of for approval of a management plan for specially managed waste, which refers here to waste under state jurisdiction. The construction of Metrobús Reforma does not entail the generation or management of hazardous waste, which is under federal jurisdiction and governed by the LGPGIR. Consequently, the articles of the LGEEPA, the LGPGIR, and the regulation to the LGPGIR cited by the Submitters are not applicable to the matters raised by the submission.

## **VI. PARTY RESPONSE IN RELATION TO ANTICIPATED AIR EMISSIONS FROM THE METROBÚS REFORMA PROJECT**

### **A) Submitters' assertions and Secretariat's determination**

The Submitters assert failures to enforce the environmental law in relation to the consideration of air emissions in the environmental impact assessment procedure, since Sedema did not request a study of the emissions that would be generated by the construction and operation of Metrobús Reforma Line 7. They therefore contend that the federal and Mexico City authorities are failing to effectively enforce the corresponding environmental law, with the consequence of air pollution and harm to the health of Mexico City residents.

The Secretariat, in its Article 14(1)(2) determination, requested a response from the Government of Mexico in relation to LGEEPA Articles 109 Bis second paragraph and 110 as regards anticipated air emissions from the Metrobús Reforma project.

### **B) Party Response**

The environmental law in regard to which the Secretariat requested a response provides as follows:

#### **Article 109 Bis.**

...

Physical and legal persons responsible for pollution sources are obligated to report the information, data, and documents necessary for the creation of the record. The information in the record shall be composed of data disaggregated by substance and source, associated with the names and addresses of the establishments that are subject to reporting.

**Article 110.** For the protection of the atmosphere, the following criteria shall be considered:

I. Air quality shall be satisfactory in all human settlements and regions of the country.

II. Air pollutant emissions, whether from artificial or natural sources and whether from fixed or mobile sources, shall be reduced and controlled in order to guarantee that air quality is satisfactory to the well-being of the population and to ecological equilibrium.

In relation to emissions associated with the construction of the Metrobús Reforma project, Sedema, during the environmental impact assessment process and in strict adherence to environmental standard NADF-018-AMBT-2009 [“Establishing the technical guidelines to be met by persons engaging in construction and/or demolition in the Federal District for prevention of air emissions of PM10 and smaller particles” (NADF-018)], which was not cited by the Submitters nor listed among the provisions for which the Secretariat requested a response, ordered the following prevention, mitigation, and compensation measures for the particle emission-related environmental impacts caused by the construction of this project, in addition to requiring that any demolition, excavation, loading, and unloading be done at night:

- Pursuant to LAPT Articles 9 paragraph XXXVII, 133 paragraph X, and 186, where an environmental pre-contingency or contingency is declared, any work and/or activities, which may generate ozone, or particles of PM<sub>10</sub> size or smaller, must be suspended and the measures taken during the period of implementation thereof must be reported and documented.
- Lead- and solvent-free paints and coatings must be used, and shields must be positioned so that ultraviolet radiation emitted by welding is not visible from outside the work zone.
- The specifications of NADF-018, including the following, must be observed:
  - Wind barriers must be installed to prevent particle dispersion.
  - Minimal quantities of treated water are to be used for dust control in dust-prone areas.
  - Control devices must be installed for washing the tires of vehicles leaving the work zone.
  - In case of interruption of the work, all particle emission sources



must be eliminated.

- To minimize emissions of noise, gases and smoke, the developer must require contractors and carriers to comply with regularly scheduled tune-up and maintenance of their freight vehicles and with the requirements of the applicable vehicle inspection program.
- The developer must require contractors and carriers to shut off truck engines when not in use.
- Contractors and carriers are prohibited from parking vehicles for loading and unloading of materials on streets in the vicinity of the construction site.
- During project construction, the provisions of Mexican official standards NOM-041-SEMARNAT-2015, NOM-045-SEMARNAT-2005, and NOM-050-SEMARNAT-1993 must be observed.
- In coordination with the Mexico City Department of Transportation, an efficient system for rerouting traffic as required by the work, must be implemented to minimize congestion.
- Coordinate with the Urban Woodland and Environmental Education Branch to relocate bicycle parking that will be affected by the work.

The Metrobús Reforma, once in operation, will significantly reduce annual air emissions on the order of 19,000 (nineteen thousand) tons of CO<sub>2</sub>, through the removal of 180 (one hundred eighty) obsolete transportation units and their replacement by 90 (ninety) double-decker units using the latest technology, moving 130,000 (one hundred thirty thousand) people per day, with an additional 10 (ten) kilometers of bicycle paths, as indicated in the technical/environmental guide to the buses on Line 7, which is attached to this Party Response as **Appendix “G.”** Additional information on this subject is available on the website at <http://www.obras.cdmx.gob.mx/proyectos/L7>.

For these reasons, the Metrobús authority has taken steps to register the Metrobús lines with the United Nations Framework Convention on Climate Change as clean development mechanisms. Further to this registration and in order to obtain emissions reduction certificates, the projects are subjected to monitoring, calculation, reporting, and auditing by an auditing agency accredited by the Convention’s Clean Development Mechanism, in accordance with the methodologies approved by the Intergovernmental Panel on Climate Change. In addition, the buses running on Metrobús Line 7 are certified EPA16. This means

that not only do they meet the national standard applicable to mobile emissions sources—NOM-044-SEMARNAT-2017 [“Establishing the maximum permissible limits for emissions of carbon monoxide, nitrogen oxides, non-methane hydrocarbons, non-methane hydrocarbons plus nitrogen oxides, particles, and ammonia from the exhaust systems of new engines using diesel as a fuel that will be used to drive motor vehicles with gross vehicular weight greater than 3,857 kilograms, as well as from the exhaust systems of new motor vehicles with gross vehicular weight greater than 3,857 kilograms equipped with this engine type” (NOM-044)]—but also that their commissioning constitutes a milestone and a reference point, not only for the operation of public mass transit but also for freight and the automotive industry in general, expediting compliance with NOM-044 in three years through the introduction of the cleanest available technology on the market.

Finally, the emissions from the Metrobús Reforma fleet have been certified by the International Council on Clean Transportation, as indicated in the document attached to this Party Response as **Appendix “H.”**

## **VII. PARTY RESPONSE IN RELATION TO LAND USE CHANGES ON PRESUMED FORESTED LAND AS A CONSEQUENCE OF THE METROBÚS REFORMA PROJECT**

### **A) Submitters’ assertions and Secretariat’s determination**

The Submitters contend that Sobse failed to apply for approval of a land use change on forested land from the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) and that there is a concomitant failure by the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) to sanction that failure. In addition, the Submitters contend that the forested land use change approval is necessary because the route of Metrobús Line 7 follows Paseo de la Reforma, over which the Federation has dominion pursuant to the General National Assets Act (*Ley General de Bienes Nacionales*).

The Secretariat requested a Party Response from the Government of Mexico in relation to the effective enforcement of LGDFS Article 117 as well as Article 122 paragraph V of the regulation to the LGDFS.

### **B) Party Response**

In relation to the alleged failure by the Mexico City authorities to apply for and obtain forested land use change approval from the federal environmental authorities, the Government of Mexico emphasizes that in order for the provisions of the LGDFS to be applicable, it would be necessary to ascertain whether a lot sustains forested vegetation and, if it does, whether or not the biological characteristics and attributes set out in LGDFS Article 7 paragraphs XXV, XXVI, LX, and XLV, as well as in Article 2 paragraphs V, XXXI, and XL of its regulation, obtain.

In this case, the vegetation along the route of Metrobús Reforma Line 7 does not possess the characteristics of forested land, so that the obligation established by LGDFS Article 7

paragraph V to apply for and obtain approval to effectuate a land use change on forested land does not exist.

## VIII. PENDING JUDICIAL PROCEEDINGS

There exists an amparo motion filed by *Academia Mexicana de Derecho Ambiental, A.C.*, one of the Submitters, with the Federal Judicial Branch (*Poder Judicial de la Federación*). This remedy is being heard in the 8<sup>th</sup> District Administrative Tribunal of Mexico City under file no. 841/2017. The amparo motion coincides with the matters raised by the submission. That is, both the amparo motion and the submission concern the same matters and are being pursued by the same party.

The acts challenged by the amparo motion are, among others:

- The construction of the Metrobús Reforma Line 7 Mass Transit Corridor.
- The impacts on Bosque de Chapultepec and Paseo de la Reforma caused by the construction of the Metrobús Reforma Line 7 Mass Transit Corridor.
- The felling of 640 (six hundred forty) trees for construction of the Metrobús Reforma Line 7 Mass Transit Corridor.

The principal folder of this file indicates a hearing scheduled for 22 June 2018, with evidence yet to be heard, including a judicial inspection.

In the incidental folder of the file, a temporary injunction was originally granted, then revoked during the session of 15 March 2018, in which the 18<sup>th</sup> Collegiate Court ruled on review incident 458/2017, denying a permanent injunction with respect to the total cessation of construction on Metrobús Line 7.

In addition, there are three more amparo motions currently before the Federal Judicial Branch in relation to various aspects of Metrobús Reforma. The details and procedural status of these are presented on pages 13 to 15 of **Appendix “B”** of this Party Response.

## IX. CONCLUSIONS

The following may be concluded from the Government of Mexico’s response to the assertions made by the Submitters:

- When granting environmental impact approval for construction of the Metrobús Reforma project, the Mexico City governmental authorities strictly adhered to the applicable legal provisions, acting within their legal purview as established by the Organic Act of the Public Administration of the Federal District (*Ley Orgánica de la Administración Pública del Distrito Federal*), assessing various environmental impacts associated with the project, including those relating to trees, waste, noise, vegetation, and green space, taking into account its characteristics and the site of its construction and operation.

- In the process of assessing and approving the environmental impact of the Metrobús Reforma project, the Mexico City authorities strictly enforced the participation and public consultation processes established by the LAPT and the RIAR. The fact that no citizens made timely use of these participation and consultation mechanisms in no way implies that the corresponding legislation was not effectively enforced.
- In approving the felling, transplanting, pruning, and restoration of trees to be affected by the construction of the Metrobús Reforma project, the Mexico City authorities strictly enforced the applicable law: the LAPT and NADF-001. In granting approval, Sedema certified and decreased the original number of trees to be affected by the work proposed by Sobse. Thus, only a fraction of the number approved by Sedema was in fact affected by the construction work on Metrobús Reforma, as noted by the PAOT when it exercised its auditing powers.
- The environmental impact approval relating to the construction of Metrobús Reforma correctly assessed the quantities of waste to be generated by this work. The Mexico City authorities made approval conditional on the filing of a management plan for specially managed waste, which was in fact filed by the project developers and which has been audited and inspected for compliance. The construction of Metrobús Reforma does not entail the generation or management of hazardous waste, but only waste considered “subject to special management” under the LGPGIR and Mexico City legislation.
- The Mexico City authorities ordered appropriate measures to mitigate the emissions generated during the construction of Metrobús Reforma, and in particular during those activities that could generate ozone or PM<sub>10</sub> or smaller particles. In addition, the operation of Metrobús Reforma will lead to a very significant annual reduction in CO<sub>2</sub> emissions (on the order of 19,000 tons), and this project is registered, audited, and monitored under the UN Framework Convention on Climate Change mechanism. The operation of Metrobús Reforma involves the use of internationally endorsed units based on the latest technology and exceeding Mexican national motor vehicle standards.
- The trees affected by the construction of Metrobús Reforma do not qualify as a forest ecosystem under the LGDFS, so there was no obligation to obtain land use change approval from the competent federal authorities before felling these trees.
- One of the Submitters, *Academia Mexicana de Derecho Ambiental, A.C.*, filed an amparo motion with the Federal Judicial Branch and this motion remains pending. Since the petitioner and the subject matter are identical, this motion qualifies as a

judicial or administrative proceeding under NAAEC Article 45(3)(a) for the purposes of NAAEC Article 14(3)(a).

In this Party Response, the Government of Mexico has given a timely response to each of the matters raised by the Submitters in their submission, as well as those raised in the Secretariat's Article 14(1)(2) determination, in the hope of offering guidance to the Submitter and the North American public as to the manner in which the Party's environmental law is enforced with respect to the specific facts addressed by the submission.