

**Reasons for Council Instructions
Regarding Submission SEM-19-002 (*City Park Project*)**

Consistent with its commitment to transparency and in its capacity as the governing body of the Commission for Environmental Cooperation (CEC) responsible for overseeing the processing of Submissions on Enforcement Matters (SEMs) predating 1 July 2020 in accordance with the procedures established under North American Agreement on Environmental Cooperation (NAAEC), the Council of the CEC hereby makes public its reasons to instruct the Secretariat to prepare a factual record in relation to submission SEM-19-002 (*City Park Project*).

1. Secretariat's NAAEC Article 15(1) notification

In its NAAEC Article 15(1) notification of 10 August 2020, the Secretariat notified the Council that the preparation of a factual record is warranted in relation to the Submitter's assertions concerning the following alleged enforcement failures:

- Articles 4, 7 paragraph XVI, and 8 paragraph XIV of the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) and Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I of the Guanajuato State Environmental Protection and Preservation Act (*Ley para la Protección y Preservación del Ambiente del Estado de Guanajuato*—LPPAEG) regarding the jurisdiction of municipal authorities over the environmental impact assessment and approval for the City Park Project.
- LPPAEG Article 31, second paragraph and Articles 19, 20, 21, 25, and 27 of the Environmental Impact Assessment Regulation to the LPPAEG (REIA-Guanajuato), regarding the EIS modality applicable to the City Park Project.
- Articles 104, 105, and 120 of the Environmental Management Bylaw of the municipality of León, Guanajuato (*Reglamento para la Gestión Ambiental*—RGA-León), regarding EIA documentation and public consultation and participation requirements.

2. Council's instructions to the Secretariat

In the attached Council Resolution 21-03, the Council instructed the Secretariat to develop a factual record for the following aspects of the submission:

- a) the assertions concerning the municipal authorities' lack of jurisdiction over environmental impact assessment and approval for the City Park Project, and
- b) the assertions concerning the insufficiency of the documentation required during the EIA process and the failure to implement the public consultation and participation process.

3. Explanation of the Council's reasons

A. The Council agrees with the Secretariat's recommendation regarding the preparation of a factual record under LGEEPA Articles 4, 7 paragraph XVI, and 8 paragraph XIV and LPPAEG Articles 6 paragraph XVI, 7 paragraph XVII, and 8 paragraph I (with reference to the provisions of LPPAEG Article 44 paragraph II), since it was not shown that the municipality of Guanajuato had jurisdiction to issue an environmental impact approval for the City Park Project.

In the case at hand, the environmental impact approval issued by the Environmental Management Department (*Dirección General de Gestión Ambiental*) of the municipality of León was based on LPPAEG Article 44 paragraph II, which gives municipalities the power to grant environmental impact approval where the work or activity in question is contemplated within the municipal ecological zoning plan.

The Council found that it has not been demonstrated that the City Park Project is included among the activities contained within the Municipal Environment, Urban Development, and Zoning Plan (*Programa Municipal de Ecología, Desarrollo Urbano y de Ordenamiento Territorial*) of León, Guanajuato.

B. The Council also agrees with the Secretariat's recommendation to prepare a factual record with respect to RGA-León Articles 104 and 105 since it was not shown that the documents required under RGA-León Article 105, paragraphs VI, VII, X, XI, and XII, were incorporated into the environmental impact assessment proceeding file.

Likewise, the Council agrees with the Secretariat that it is not clear whether the Environmental Regulation Branch of the municipality of León (*Dirección de Regulación Ambiental*—DRA) enforced provisions of the RGA-León relating to the right to public consultation and community participation. Under Article 120, the EIS for the City Park Project should have been listed among the projects received by the DRA for assessment.

C. In its NAAEC Article 15(1) notification to Council, the Secretariat recommended the preparation of a factual record regarding the enforcement of LPPAEG Article 31, second paragraph, and REIA-Guanajuato Articles 19, 20, 21, 25, and 27. These provisions are implicated in the submitter's assertion that the modality in which the City Park EIS was submitted does not correspond to the anticipated environmental impacts of the project.

In its response, the Secretariat of Environment and Natural Resources (SEMARNAT) explained that LPPAEG Article 31 solely establishes the obligation to specify the modality under which the environmental impact statement is to be prepared – general, intermediate, or specific. Article 31 does not specify which modalities must apply to which projects. Here, the decision approving the environmental impact statement does reference the modality corresponding to the project: that is, the general modality.

Moreover, while REIA-Guanajuato Articles 19, 20, and 21 govern the subcategories—A, B, or C—applicable to the general modality, there is no legal requirement to indicate or determine in the environmental impact approval that the work or activity was carried out under any of these subcategories.

With regard to REIA-Guanajuato Articles 25 and 27, which govern the intermediate and specific modalities to which LPPAEG Article 31 refers, the Council determined that these modalities apply only where there is a possibility of impact on a sub-watershed, or where the work or activity is to be carried out on a site catalogued as a “protection or conservation” site under the Municipal Environment, Urban Development, and Zoning Plan of León, Guanajuato. Therefore, these modalities do not apply to the case at hand.

D. The Council agrees with the Secretariat that a factual record is not warranted regarding the effective enforcement of Article 9, paragraph XIII of the General Wildlife Act (*Ley General de Vida Silvestre*), Article 32 paragraph VI of the Internal Regulation of SEMARNAT, or NOM-059-SEMARNAT-2010, since the Management Plan for Four Priority Species (*Programa de Manejo para*

Cuatro Especies Prioritarias) referenced in the submission was not an administrative act requiring approval by the Wildlife Branch (*Dirección General de Vida Silvestre*) of SEMARNAT.