



RESPONSE OF THE
UNITED MEXICAN STATES

SUBMISSION SEM-22-002 (Tren Maya)

SUBMITTED TO THE SECRETARIAT OF THE COMMISSION FOR ENVIRONMENTAL COOPERATION
PURSUANT TO ARTICLE 24.27(4) OF THE UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA)

Mexico City, 30 January 2023

CONTENTS

GLOSSARY..... ii

TABLE OF DOCUMENTARY APPENDICES iii

A. BACKGROUND 1

B. PARTY RESPONSE OF MEXICO UNDER USMCA ARTICLE 24.27(4) 2

(a) Whether the matter at issue is the subject of a pending judicial or administrative proceeding, in which case the CEC Secretariat shall proceed no further..... 2

i) Alleged clearing, grading, and filling work in connection with Section 5 South of the Project, without prior environmental impact assessment and approval 2

ii) The manner in which Section 5 South of the Project was assessed and approved..... 10

iii) Fragmentation of the Project 11

iv) Alleged failure of the Office of the Federal Attorney for Environmental Protection to fulfill its duties..... 13

(b) Any other information that the Party wishes to provide 14

C. CONCLUSIONS 18

GLOSSARY

Term	Definition
CEC	Commission for Environmental Cooperation
Conagua	National Water Commission (<i>Comisión Nacional del Agua</i>)
Constitution	Political Constitution of the United Mexican States (<i>Constitución Política de los Estados Unidos Mexicanos</i>)
CPF	Federal Penal Code (<i>Código Penal Federal</i>)
DGIRA	Environmental Impact and Risk Branch (<i>Dirección General de Impacto y Riesgo Ambiental</i>)
DGGFSOE	Forestry, Soils, and Ecological Zoning Branch (<i>Dirección General de Gestión Forestal, Suelos y Ordenamiento Ecológico</i>)
ECA	<i>Agreement on Environmental Cooperation among the Governments of Canada, the United States of America, and the United Mexican States</i> (Environmental Cooperation Agreement)
LAN	National Waters Act (<i>Ley de Aguas Nacionales</i>)
LGEEPA	General Ecological Equilibrium and Environmental Protection Act (<i>Ley General del Equilibrio Ecológico y la Protección al Ambiente</i>)
LGDFS	General Sustainable Forestry Act (<i>Ley General de Desarrollo Forestal Sustentable</i>)
LGTAIP	General Transparency and Access to Public Information Act (<i>Ley General de Transparencia y Acceso a la Información Pública</i>)
LGVS	General Wildlife Act (<i>Ley General de Vida Silvestre</i>)
Mexico	United Mexican States
NAFTA	North American Free Trade Agreement
Order	Order instructing the agencies and entities of the Federal Public Administration to take the indicated measures in relation to those projects and works of the Government of Mexico that are considered to be in the public and national security interest, as well as strategic priorities for national development
Profepa	Office of the Federal Attorney for Environmental Protection (<i>Procuraduría Federal de Protección al Ambiente</i>)
Protocol	<i>Protocol replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada</i>
Project	Tren Maya Section 5 South
RI-Semarnat	Internal Regulation of the Ministry of the Environment and Natural Resources, published in the Official Gazette of the Federation on 27 July 2022
Semarnat	Ministry of the Environment and Natural Resources (<i>Secretaría de Medio Ambiente y Recursos Naturales</i>)
submission	Submission SEM-22-002 (Tren Maya), filed with the Commission for Environmental Cooperation on 21 October 2022
Submitters	The organizations Moce Yax Cuxtal, A.C., Jaguar Wild Center, A.C., and Grupo Gema del Mayab, A.C., which substantiated their legal existence, along with physical persons whose identity is kept confidential
USMCA	United States-Mexico-Canada Agreement

TABLE OF DOCUMENTARY APPENDICES

Appendix	Description of document
MX-001	Political Constitution of the United Mexican States
MX-002	General Ecological Equilibrium and Environmental Protection Act
MX-003	General Sustainable Forestry Act
MX-004	National Waters Act
MX-005	Order instructing the agencies and entities of the Federal Public Administration to take the indicated measures in relation to those projects and works of the Government of Mexico that are considered to be in the public and national security interest as well as strategic priorities for national development
MX-006	Provisional environmental impact approval
MX-007	Provisional land-use change approval
MX-008	Environmental impact statement – regional modality
MX-009	Environmental impact approval decision
MX-010	Application for approval of “CUS Tren Maya Section 5”
MX-011	Final land-use change approval
MX-012	File no. SRA/DGIRA/DG-00145-23
MX-013	File no. SPARN/DGGFSOE/418/0052/2023
MX-014	General Wildlife Act
MX-015	Procedural status of the proceedings of which Semarnat forms a part
MX-016	Information on amparo proceedings reported by Semarnat
MX-017	Procedural status of the proceedings of which Fonatur Tren Maya forms a part
MX-018	Information on amparo proceedings reported by Fonatur Tren Maya, S.A. de C.V.
MX-019	File no. B00.7.01.-010

A. BACKGROUND

1. On 21 July 2022, the organizations Moce Yax Cuxtal, A.C., Grupo Gema del Mayab, A.C., Red de Formadores Socio Ambientales, Sélvame del Tren, Cenotes Urbanos, Jaguar Wild Center, A.C., and 18 persons who requested that their identities be kept confidential pursuant to Article 16(1) of the *Agreement on Environmental Cooperation among the Governments of Canada, the United States of America, and the United Mexican States* (Environmental Cooperation Agreement—ECA) filed a Submission with the Secretariat of the Commission for Environmental Cooperation (CEC Secretariat) in accordance with Article 24.27(1) of the United States-Mexico-Canada Agreement (USMCA).
2. The Submission asserts that the Mexican environmental authorities have failed to effectively enforce environmental laws in relation to the construction of Tren Maya Section 5 South Project (the Project), which will cross the municipalities of Solidaridad and Tulum in the state of Quintana Roo.
3. In particular, it is evident from the Submission that the Submitters assert that the Mexican environmental authorities are failing to enforce environmental laws with respect to: 1) clearing, grading, and filling work in connection with Section 5 South of the Project without prior environmental impact assessment and approval, and 2) the manner in which the Project was assessed and approved.¹
4. Further to its review of the submission, the CEC Secretariat, in Determination A24.27(2)(3)/SEM/22-002/08/DET of 22 August 2022, concluded that the submission did not meet the eligibility requirements of USMCA Article 24.27(2); nevertheless, it requested a revised submission from the Submitters within a period of 60 calendar days, which was to include the following information: 1) legal status of the organizations signing the submission, 2) electronic copies of technical documents mentioned in the submission, 3) information relating to citizen complaints and remedies filed in connection with the matter in question, and 4) any other information in support of the submission.²
5. On 21 October 2022, further to the request of the CEC Secretariat, the Submitters filed a revised submission, which was reviewed by the CEC Secretariat. The latter's Determination A24.27(2)(3)/SEM/22-002/18/DET stated that the revised submission meets the eligibility requirements and requested a Party Response from the Government of Mexico in regard to the enforcement of the following legal provisions:
 - a) Article 4, fifth and sixth paragraphs, of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*—Constitution);
 - b) Articles 5, paragraphs III, VIII and XI, 15, paragraph XII, 28, paragraphs I and VII, 34, 162, 170, 189, 192, 193, and 194 of the General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA);
 - c) Articles 93, 97, 154, and 155, paragraphs VII and XII of the General Sustainable Forestry Development Act (*Ley General de Desarrollo Forestal Sustentable*—LGDFS);
 - d) Articles 5, paragraph I, 58(a), and 107 of the General Wildlife Act (*Ley General de Vida Silvestre*—LGVS);
 - e) Articles 7 Bis paragraph I and 14 Bis 5, paragraphs I, IX, and XX of the National Waters Act (*Ley de Aguas Nacionales*—LAN); and
 - f) Article 418 paragraphs I and III of the Federal Penal Code (*Código Penal Federal*—CPF).

B. PARTY RESPONSE OF MEXICO UNDER USMCA ARTICLE 24.27(4)

6. As the CEC Secretariat states in the Determination, in which it requests a Party Response from the

¹ Submission at 2.

² Determination A24.27(2)(3)/SEM/22-002/08/DET at 21–22, ¶ 83–84.

Government of Mexico, the USMCA came into force on 1 July 2020,³ pursuant to the *Protocol replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada* (the Protocol). With reference to USMCA Article 24.27(4), the following Party Response is hereby submitted to the CEC Secretariat:⁴

- (a) Whether the matter at issue is the subject of a pending judicial or administrative proceeding, in which case the CEC Secretariat shall proceed no further.
 - i) Alleged clearing, grading, and filling work in connection with Section 5 South of the Project, without prior environmental impact assessment and approval.
 - Environmental impact assessment (AIA)

7. The Submitters assert that Mexico has failed to effectively enforce its environmental law with respect to the construction of Section 5 South of the “Tren Maya” Project, specifically as regards clearing, grading, and filling work conducted on Section 5 South without prior environmental impact assessment and approval.⁵

8. In this regard, the CEC Secretariat is hereby informed that on 22 November 2021, the “Order instructing the agencies and entities of the Federal Public Administration to take the indicated measures in relation to those projects and works of the Government of Mexico that are considered to be in the public and national security interest as well as strategic priorities for national development” (the Order)⁶ was published in the Official Gazette of the Federation (*Diario Oficial de la Federación*). The Order reads, in part, as follows:

ARTICLE 1. Those projects and works under the responsibility of the Government of Mexico that are associated with infrastructure for the roads, telecommunications, customs, border, hydraulic, water, environment, tourism, health, railroads, rail transport in all its energy modalities, ports, and/or airports sectors, and those which in view of their object, characteristics, nature, complexity, and magnitude are considered priorities and/or strategic for national development, are hereby declared to be of public and national security interest.

ARTICLE 2. The agencies and entities of the Federal Public Administration are hereby instructed to grant provisional approval, upon the filing and/or obtaining of reports, permits, or licenses necessary to initiate the projects or works contemplated in the preceding article, so as thereby to ensure their timely execution, the anticipated societal benefit, and the disbursement of the approved budgets.

Provisional approval shall be granted within a maximum period of five working days as from the date of filing of the corresponding application. Where said period elapses without express provisional approval having been granted, such approval shall be deemed to have been granted.

ARTICLE 3. Provisional approval shall be effective for the twelve months following the date it is granted, during which period final approval shall be obtained in accordance with the applicable provisions.

9. Further to the above-cited provisions of the Order, on 1 December 2021, Fonatur Tren Maya, S.A. de C.V. (the Developer) filed a document, dated 30 November 2021, with the Environmental Impact and Risk Branch (*Dirección General de Impacto y Riesgo Ambiental—DGIRA*) requesting that provisional approval be granted for works and/or activities on the “Tren Maya Section 5 AIA” project, consisting of the construction and operation of rail infrastructure and complementary works.

³ *Ibid.* at 1, ¶ 1.

⁴ The information contained in this response was provided by various administrative units and deconcentrated bodies of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*) and also includes information submitted by Fonatur Tren Maya, S.A. de C.V.

⁵ Determination A24.27(2)(3)/SEM/22-002/18/DET at 1, ¶ 2.

⁶ MX-005.

10. In its review, the DGIRA concluded that the Developer’s application adhered to Article 2 of the Order, and therefore, in file no. SGPA/DGIRA/DG-05891-21 of 7 December 2021, granted provisional approval to the Developer for the works and activities included in the Project, among them pre-feasibility studies, such as soil mechanics, topography, and hydrology studies; site preparation, including the implementation of wildlife salvage and relocation plans; field surveying of the railway corridor, and felling, clearing, filling, and grading work.⁷

11. The notice of provisional approval makes the approval conditional on the Developer’s obligation to obtain final environmental impact approval for the Project within a maximum period of 12 months as from notification of the granting of provisional approval.

12. On the basis of the foregoing, the Developer was able to commence the works and activities corresponding to the construction and operation of rail infrastructure and complementary works relating to Tren Maya Section 5 South, taking into consideration the various conditions set out in file no. SGPA/DGIRA/DG-05891-21, among them the following:⁸

A. Comply with each of the legal and planning instruments applicable to the Project, refrain from affecting environmental structure and function, and demonstrate, by means of a technical study, that the ecological equilibrium of the directly affected area and its area of influence is not jeopardized.

B. In the course of any work or activity relating to the Project, implement those prevention, mitigation, and compensation measures that are sufficient and adequate to prevent, avoid, or minimize possible impacts relating to the Project, including but not limited to the following:

- Wildlife salvage and relocation
- Monitoring of fauna
- Design, construction, and monitoring of wildlife crossings
- Reforestation
- Management of specially handled, urban solid, and hazardous waste
- Soil conservation measures
- Machinery and equipment maintenance
- Environmental education
- Environmental supervision
- The keeping of logs of compliance with the measures applied
- Prevention, mitigation, and management of environmental contingencies (air quality)
- Comprehensive water management measures

13. In compliance with the Developer’s obligation under SGPA/DGIRA/DG-05891-21 to obtain final environmental impact approval for the Project within a maximum period of 12 months, the CEC Secretariat is hereby informed that on 17 May 2022, the Developer submitted file no. FTM/AZH/519/2022 of 16 May 2022 to the DGIRA, with attachment of the official document, titled Semarnat-04-003-A, “Receipt, assessment, and decision on environmental impact statement in its regional modality (EIS-R).” This document does not include any high-risk activities associated with the project titled “Regional modality of the environmental impact statement for Tren Maya Section 5 South,” pursuant to LGEEPA Article 28, paragraphs I, VII, and IX, 30, and 35, first, second, and last paragraphs, which were recorded under number 23QR2022V0020.

14. Further to these developments, on 18 May 2022, in compliance with the provisions of LGEEPA Article 34, paragraph I as well Article 37 of the LGEEPA Environmental Impact Assessment Regulation (*Reglamento en Materia de Evaluación del Impacto Ambiental—REIA*), the DGIRA issued, in file no. DGIRA/22/22, Year XX of the Special Environmental Gazette (*Gaceta Ecológica Extraordinaria*) and on the web portal of the Ministry of the

⁷ MX-006 at 12.

⁸ Ibid. at 12–21.

Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat), the list of applications for approval of projects subject to the EIA procedure, including the Project.

15. Subsequently, on 19 May 2022, an undated, unnumbered document was filed with the Semarnat office (*oficina de representación, formerly delegación federal*) in the state of Quintana Roo and relayed that same day by email to the DGIRA. In the document, a community member of the municipality of Solidaridad in the state of Quintana Roo who was allegedly affected by the execution of the Project requested that the Project be subjected to the public consultation and public information meeting process.

16. In response to the request, the DGIRA, in file nos. SGPA/DGIRA/DG-03146-22 and SGPA/DGIRA/DG-03147-22, both dated 19 May 2022, notified the applicant and the Developer that the Project EIS-R had been made available for public consultation, which was to take place from 23 May to 17 June 2022. In addition, it notified the Semarnat office in the state of Quintana Roo, in file no. SGPA/DGIRA/DG-03148, that it was to make the Project EIS available to the public for consultation. Likewise, it published in the Environmental Gazette, under no. DGIRA/23/22, Year XX, the commencement of the public consultation on the Project, which was held from 23 May to 17 June 2022.

17. For the purposes of carrying out the public consultation, the DGIRA required the Developer to publish an excerpt of the Project in a wide-circulation newspaper in the state of Quintana Roo so that any interested person could propose the application of additional prevention and mitigation measures as well as any other measures considered relevant, in accordance with LGEEPA Article 34, paragraph IV, and REIA Article 41, paragraph III.

18. On 20 and 23 May 2022, the Developer submitted file nos. FTM/AZH/557/2022 and FTM/AZH/00577/2022, consisting of original pages from the newspapers *Por Esto* and *La Jornada*, respectively, in which an excerpt of the Project had been published, both in the state of Quintana Roo and nationally.

19. During the public consultation period held pursuant to LGEEPA Article 34, paragraph IV, and REIA Article 41, paragraph III, the Semarnat office in Quintana Roo received 524 comments in the form of questionnaires and 30 comments via other channels. Pursuant to LGEEPA Articles 34, paragraphs IV and V, and REIA Article 41, paragraphs III and IV, the main comments made during the public consultation process were submitted to the central offices of Semarnat and included in result XIV of file no. SGPA/DGIRA/DG-03703-22,⁹ bearing in mind that several of the comments were repetitive.

20. In relation to the public information meeting, in view of the Project's location and characteristics and in accordance with LGEEPA Article 34, paragraph III, and REIA Article 43, first paragraph, the meeting was held in coordination with the local authorities. For this purpose, on 2 June 2022, through the Environmental Gazette, year XIX, no. DGIRA/025/22, the DGIRA published an announcement that the public information meeting would be held, and it was in fact held on 7 June 2022 as prescribed by REIA Article 43, paragraph II.

21. The public information meeting was held at the "Casa Ejidal" of the Jacinto Pat Ejido, located at Carretera Federal Tulum-Cancún km 124 s/n, municipality of Tulum, Quintana Roo. The detailed minutes of this meeting indicate the participation of 18 speakers, 72 question forms, and 351 attendees. As prescribed by REIA Articles 41, paragraph IV, and 43, the public information meeting process and the results of the comments presented were recorded in condition 7 of file no. SGPA/DGIRA/DG-03703-22. Taking into account the provisions of REIA Article 43, paragraph V, the DGIRA appended to the administrative file the written comments submitted at the public information meeting.

22. Once the foregoing processes were completed, the DGIRA reviewed the description of the works and activities and, where applicable, the partial development plans; the relationship to other applicable planning instruments and legal provisions; the description of the regional environmental system and the statement of the development and degradation patterns of the region; the identification, description, and assessment of the

⁹ MX-009.

cumulative and residual environmental impacts on the regional environmental system; the regional environmental forecasts and, where applicable, the assessment of alternatives; and the identification of the methodological instruments and technical elements supporting the results of the environmental impact statement, as presented in the EIS-R of the Project, as prescribed by LGEEPA Article 35 and REIA Article 13, paragraphs II to VII.¹⁰

23. Based on this review, the DGIRA, in file no. SGPA/DGIRA/DG-03703-22 of 20 June 2022, granted regional environmental impact approval to the Project intended to be located in the municipalities of Solidaridad and Tulum in the state of Quintana Roo. For reference, the CEC Secretariat is hereby informed that the technical characteristics of the Project as approved are described in recital 10 of the document in question and in detailed fashion in chapter II of the EIS-R.¹¹

24. For the execution of the works or activities related to the Project, condition 8 of the above-mentioned document, pursuant to LGEEPA Article 35, paragraph II, and REIA Article 47, first paragraph, established that the operation, maintenance, and abandonment of the approved works were subject to the description contained in the EIS-R and to compliance with the various conditions set out in that resolution.¹²

25. For the foregoing reasons, the CEC Secretariat is hereby informed that the works and activities comprised by Tren Maya Section 5 South were carried out in accordance with Mexican law and that the environmental authorities have not failed to enforce Article 4, fourth and fifth paragraphs of the Constitution and LGEEPA Articles 5, paragraphs III, VIII, and XI, 15, paragraph XII, 28, paragraphs I and VII, and 34.

26. Furthermore, pursuant to USMCA Article 24.27(3)(a), the CEC Secretariat is hereby informed that various amparo proceedings are currently being heard by the jurisdictional bodies of the Judicial Branch of the Federation (*Poder Judicial de la Federación*) in connection with the construction of Tren Maya Section 5 South, in which the act challenged is identified as alleged clearing, grading, and filling work on Section 5 South of the Project being performed without prior environmental impact assessment and approval. Information on the status of the amparo proceedings in question is being sent for the purposes of your review.¹³

27. In this context, it should be emphasized that the Judicial Branch of the Federation is the body in Mexico responsible for delivering justice by seeing to the effective enforcement of pre-established laws and regulations.

28. Therefore, pursuant to USMCA Article 24.27(3)(a), the CEC Secretariat is requested not to continue with its review of the submission.

- Land-use change approval

29. On 30 November 2021, Fonatur Tren Maya, S.A. de C.V., applied to the Forestry, Soils, and Ecological Zoning Branch (*Dirección General de Gestión Forestal, Suelos y Ordenamiento Ecológico—DGGFSOE*) for provisional approval of the “CUS Tren Maya Section 5” project.¹⁴ Provisional approval was granted in file no. SGPA/DGGFS/712/2070/21¹⁵ of 8 December 2021 in accordance with the provisions of Article 1 of the Order,¹⁶ which declares the execution of those projects and works under the responsibility of the Government of Mexico that are associated with infrastructure for the roads, telecommunications, customs, border, hydraulic, water, environment, tourism, health, railroads, rail transport in all its energy modalities, ports, and/or airports sectors, and those projects which, in view of their object, characteristics, nature, complexity, and/or magnitude are

¹⁰ MX-008.

¹¹ MX-008 and MX-009.

¹² MX-009.

¹³ MX-015 and MX-017.

¹⁴ MX-010.

¹⁵ MX-007.

¹⁶ MX-005.

considered priorities and/or strategic for national development, as being of public and national security interest.

30. On this basis, the DGGFSOE reviewed the application submitted by the Developer and found that Section 5 South formed a part of the larger Tren Maya project, consisting of a loop running through the states of Chiapas, Tabasco, Campeche, Yucatán, and Quintana Roo that will interconnect the main cities and tourist sites of the Yucatán Peninsula, to be developed in largest part along existing rights-of-way such as railways, highways, and transmission lines.

31. For this reason, the DGGFSOE, in file no. SGPA/DGGFS/712/2070/21, found that Section 5 South conformed to the text of Article 2 of the Order and granted provisional land-use change approval on these grounds. The approval obligated the Developer to comply with each of the legal and planning instruments applicable to the Project works and activities described in the Developer's application with a view to avoiding grave ecological disequilibrium during development. It imposed the further obligation of environmental compensation, consisting of measures to restore any ecosystems that could be affected.

32. Likewise, the document in question obligated the Developer to implement prevention, mitigation, and compensation measures to prevent and avoid possible environmental harms that could be caused in the course of the works and activities related to the Project, these to include, without being limited to, the following:

- Proof of ownership or possession, or a demonstration that the applicant is entitled to carry out the forested land-use change on the lot or lots that could be affected.
- A technical study ensuring the criteria determining the exceptional nature of certain features of biodiversity and requiring their maintenance in the ecosystems to be affected; that soil erosion, carbon storage capacity, water quality deterioration, and/or diminished water catchment must be mitigated in the areas affected by the removal of forest vegetation due to the Project; and the environmental services that will be affected by the land-use change.
- In the course of work on the Project, compliance with the precepts set out in the applicable legal provisions, such as the applicable ecological zoning plans, Mexican Official Standards, and other applicable legal and regulatory provisions.
- The applicable contribution to the Mexican Forest Fund (*Fondo Forestal Mexicano*) for environmental compensation.
- The inclusion of the salvage and relocation plan for affected wildlife and their adaptation to their new habitat.
- Estimation of the carbon storage capacity of the area subject to land-use change and development of a plan to recover it within the watershed where the project is located.
- Estimation of soil erosion and its negative effect on water catchment in the soil and water conservation area for the recovery thereof.
- The filing of periodic reports on Project execution and development.
- Volumetric quantification by species and by number of specimens per species and per lot making up the forest raw materials derived from the land-use change.
- All prevention and mitigation measures applicable to the forested land-use change in this specific case.

33. Pursuant to Article 3 of the Order, the Developer was granted a maximum period of 12 months as from the day following notice of approval to obtain final land-use change approval.

34. Further to this, on 13 September 2022, the Developer of the Project filed with the DGGFSOE an application for forested land-use change on an area of 413.19 ha, for development of the project titled "Technical Study in support of Tren Maya Section V Phase I Cancún – Tulum," located in the municipalities of Benito Juárez, Puerto Morelos, Solidaridad, and Tulum in the state of Quintana Roo.

35. In compliance with LGDFS Article 93 and Article 143 paragraphs III, IV, and V of the regulation thereto, the

DGGFSOE asked the Semarnat office in the state of Quintana Roo to request an opinion from the State Forest Council (*Consejo Estatal Forestal*) on the viability of the Project, as well as to conduct a site visit to the lot or lots covered by the application. In addition, by means of various documents, it requested technical opinions from the Environmental Zoning Division (*Dirección de Ordenamiento Ecológico—DOE*), the National Biodiversity Commission (*Comisión Nacional para el Conocimiento y Uso de la Biodiversidad—Conabio*), and the General Wildlife Branch (*Dirección General de Vida Silvestre—DGVS*). On 15 December 2022, on the basis of these opinions, in file no. SPARN/DGGFSOE/418/1306/2022,¹⁷ it exceptionally approved the change of forested land use on an area of 413.19 ha for the development of the project, titled “Technical Study in Support of Tren Maya Section V Phase I Cancún – Tulum,” located in the municipalities of Benito Juárez, Puerto Morelos, Solidaridad, and Tulum in the state of Quintana Roo. This approval imposed various obligations, including compliance with the prevention and mitigation measures to reduce impacts on wildlife that were set out in the technical study.

36. In view of the foregoing, the CEC Secretariat is hereby informed that in compliance with the “Order instructing the agencies and entities of the Federal Public Administration to take the indicated measures in relation to those projects and works of the Government of Mexico that are considered to be in the public and national security interest as well as strategic priorities for national development,” published in the DOF on 22 November 2021, the project titled “Technical Study in Support of Tren Maya Section V Phase I Cancún – Tulum” adhered to the provisions of Article 3 of the Order, since the project currently holds approval to carry out land-use changes on forested land.

37. As far as the enforcement of LGDFS Article 93, with respect to those exceptional cases in which land-use changes on forested land may be approved, provided that it is demonstrated that the biodiversity of the ecosystems to be affected is maintained and that soil erosion, carbon storage capacity, water quality degradation, and diminished water catchment are mitigated.

38. The Party points out to the CEC Secretariat that this forested land was assessed on the basis of the “Technical Study in Support of Tren Maya Section V Phase I Cancún – Tulum,” the opinion of the State Forest Council, the report of the site visit conducted by the Semarnat office in Quintana Roo to the lots covered by the forested land-use change application filed by the Developer, and the opinions produced by the DOE, Conabio and the DGVS,¹⁸ seeking thereby to regulate the removal of forest vegetation and to promote the conservation and protection of forest ecosystems, mitigating the impacts that this action would produce. In this way, the Mexican environmental authorities effectively enforced Article 4, fifth paragraph, of the Constitution; LGEEPA Article 5 paragraphs III, VIII, and XI, and LGVS Articles 5 paragraph I and 58(a).

39. It should also be noted that in compliance with that provision, the DGGFSOE, prior to granting land-use change approval, made the relevant consultations with the State Forest Council, which indicated a favorable consensus on the Project among the committee members, taking into consideration the information contained in the technical study.¹⁹

40. In regard to the enforcement of LGDFS Article 97, the CEC Secretariat should be aware that this provision prohibits the granting of land-use change approval in cases where the loss of forest cover was caused by fire or felling within the last 20 years and it is demonstrated to the Ministry that the affected forest vegetation has regenerated by means of the mechanisms established for that purpose in the LGDFS Regulation. This provision does not apply to the case at hand, since the land-use change approved for the purposes of the Project was issued for land on which the existing vegetation was classified as seasonal evergreen forest and secondary vegetation of seasonal evergreen forest.²⁰

¹⁷ MX-011.

¹⁸ *Ibid.* at 35–55.

¹⁹ *Ibid.* at 40.

²⁰ MX-008, chapter IV, at 174.

41. As regards the manner in which trees were felled as grounds for rejection of the land-use change application, it is important to reiterate that the activities relating to the production of studies and drafts, site preparation, construction, maintenance and operation, including cleanup, conditioning, felling, and clearing were approved by means of the provisional land-use change approval granted by the DGGFSOE in file no. SGPA/DGGFS/712/2070/21²¹ of 8 December 2021.

42. For these reasons, the CEC Secretariat is hereby informed that the works and activities relating to Tren Maya Section 5 South were carried out in accordance with Mexican law and that the environmental authorities did not fail to enforce Article 4, fourth and fifth paragraphs, of the Constitution; LGEEPA Articles 5 paragraphs III, VIII and XI and 15 paragraph XII, and LGDFS Articles 93 and 94.

43. Furthermore, the Party wishes to reiterate to the CEC Secretariat the existence of various pending amparo proceedings in connection with the construction of Tren Maya Section 5 South, in which the act challenged is identified as alleged clearing, grading, and filling work on Section 5 South of the Project without prior environmental impact assessment and approval.²²

44. Therefore, pursuant to USMCA Article 24.27(3)(a), the CEC Secretariat is requested not to continue with its review of the submission.

ii) The manner in which Section 5 South of the Project was assessed and approved

45. The Submitters make reference to the “Order instructing the agencies and entities of the Federal Public Administration to issue provisional approval for those projects and works of the Government of Mexico that are considered to be in the public and national security interest as well as strategic priorities for national development.” In this regard, the Party wishes to specify that this Order was issued by the President of the Republic by virtue of the powers vested in him by Article 89 paragraph I of the Constitution, supported by Articles 26 and 90 of the Constitution and Articles 1, 2, 3, 10, 11, 27, 29, 30, 30 Bis, 31, 32, 32 Bis, 33, 34, 35, 36, 37, 38, 39, 40, 41, 41 Bis, and 42 of the Enabling Act of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*).

46. The Order instructs the agencies and entities of the Federal Public Administration to grant provisional approval to those projects and works of the Government of Mexico that are considered to be in the public and national security interest as well as strategic priorities for national development. Within this context, the Mexican environmental authorities granted the relevant provisional and final environmental approvals for development and execution of Tren Maya Section 5 South.

47. On this point, the CEC Secretariat is hereby informed that there are various pending amparo proceedings in which the acts challenged revolve around the alleged violation of constitutional provisions relating to the protection of human rights, the right to a healthy environment, and access to water, in accordance with Article 4, fifth and sixth paragraphs, of the Constitution. In addition, the complainants assert that the Order violates the principles of prevention, precaution, progressive realization, and non-regression of human rights and that the development of Tren Maya Section 5 South cannot be classified as being in the public or national security interest.²³

48. In this context, until the Judicial Branch of the Federation, an autonomous body separate from the Federal Executive Branch, issues final rulings on the amparo proceedings and determines whether or not there has been a violation of the constitutional provisions relating to the protection of human rights as a consequence of the challenged acts, the CEC Secretariat is requested, pursuant to USMCA Article 24.27(3)(a), not to continue with its

²¹ MX-007 at 3.

²² MX-015 and MX-017.

²³ Ibid.

review of the submission.

iii) Fragmentation of the Project

49. The Submitters assert that “the Tren Maya megaproject was improperly divided or fragmented for purposes of assessment. Despite the improper fragmentation that is taking place, one must not forget its nature as a megaproject intended to encompass five states of the country; a project whose divisions or fragments, now termed sections, are intrinsically and dependently interrelated,” and further, that “a comprehensive assessment should have been performed for the entire megaproject in order to identify and assess the significant, cumulative, synergistic, direct, indirect, and residual impacts that would result from the interaction of the entire megaproject with the works and activities already existing in the affected ecosystems.”²⁴

50. In this regard, the Party clarifies that the submission of the Tren Maya project to the environmental impact assessment procedure in separate sections was a function of the length and area affected by each as well as the number of states and municipalities it will cross and the size of each of the regional environmental systems delimited by each section, as indicated in the following table:

SECTION	LENGTH (KM)	AREA (HA)	NO. OF STATES	NO. OF MUNICIPALITIES	AREA OF REGIONAL ENVIRONMENTAL SYSTEM
PHASE I	638.81	2,668.26	4	25	13,817.96 km ²
SECTION 4	239.538	1,437.228	2	11	9,371.83 km ²
SECTION 5 NORTH	43.575	292.320	1	3	1,685.38 km ²
SECTION 5 SOUTH	67.667	516.75	1	2	1,891.31 km ²
SECTION 6	255.50	1,505.04	1	4	1,271,269.08 ha
SECTION 7	255.36	1,163.65	2	3	11,393.67 km ²

51. It may be observed from the data in the table above that the quantity of information to be managed and analyzed if the project had been presented in its entirety on a single environmental impact statement would have entailed providing a description and characterization of the various environmental components (soil, water, flora, fauna, geology, geohydrology, karstic landscape, etc.) at a more general level, encompassing the totality of the regional environmental system delimited. This would have obscured ecological processes and environmental features or characteristics important at a smaller scale, such as the identification and location of karstic structures, surface and underground bodies of water or watercourses, biological corridors, and sensitive ecosystems such as wetlands and Ramsar sites that are present along the route of the project.

52. Contrariwise, submitting the Project in sections made it possible to avoid the above-mentioned methodological errors in the preparation and filing of the environmental impact statements, as well as in the technical, environmental, and regulatory assessment of the project conducted by the assessing authority.

53. Moreover, it should be noted that any environmental impact statement, whether in the particular or regional modality, presents and assesses the direct and indirect impacts that will be caused by the works and activities of each project undergoing assessment, as was done in this case for each section of the Tren Maya. Likewise, it should be noted that every environmental impact statement submitted in the regional modality considers not only the regional environmental impacts but also the cumulative and residual impacts (it is worth emphasizing that Mexican environmental law, in particular REIA Article 13, paragraphs V and VI, only prescribes the assessment of the cumulative and residual environmental impacts, not the synergistic ones) that will be caused by each project, in this case the various sections of the Tren Maya. The fact that the Tren Maya was

²⁴ Submission at 11–12.

submitted in sections does not mean that the cumulative and residual environmental impacts were not considered and assessed, along with the corresponding strategies proposed for prevention and mitigation of these same environmental impacts in a regional, and not merely isolated, context.

54. Newly considering the data given in the initial table, it may be observed that each section of the Tren Maya submitted for environmental impact assessment comprises a fairly extensive regional environmental system delimited on the basis of environmental, technical, regulatory, and anthropogenic criteria as a function of the nature and dimensions of the project as well as the influence of the potential environmental impacts that it will cause. This procedure ensured that the environmental impact assessment of each of its sections would consider the various works and activities existing in each regional environmental system delimited for each case, with a view to identifying and assessing the potential cumulative impacts in the regional context.

55. In addition, the CEC Secretariat is hereby informed that the question of the Project's having been fragmented into sections is currently the subject of the amparo proceedings, in which the challenged act is "the improper fragmentation of the Tren Maya Project."²⁵ For this reason, pursuant to USMCA Article 24.27(3)(a), the CEC Secretariat is requested not to continue with its review of the submission.

iv) Alleged failure of the Office of the Federal Attorney for Environmental Protection to fulfill its duties

- Citizen complaint, file no. PFPA/5.3/2C.28.2/00011-20

56. In regard to the citizen complaints mentioned in the submission, file no. PFPA/5.3/2C.28.2/00011-20 opened by Profepa in response to the filing of complaints under LGEEPA Article 189, 37 complaints dated 7 March 2022 were located. These were filed by persons who requested that their identity be kept secret and who are therefore identified as C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C13, C14, C15, C16, C17, C18, C19, C20, C21, C22, C23, C24, C25, C26, C27, C28, C29, C30, C31, C32, C33, C34, C35, C36, and C49. These complaints were consolidated by an order of 17 March 2022.

57. Likewise, six complaints dated 16 August 2022 were located. These were filed by various citizens who are identified as C171, C175, C176, C177, C178, and C193. These complaints were consolidated by orders issued 23 and 24 August 2022. The orders specify the complainants' right, pursuant to LGEEPA Article 193, to assist Profepa. Notice of these orders was given to the complainants via the notifications list and sent to the emails that they had provided.

58. Pursuant to LGEEPA Article 192, on 17 March and 23 August 2022, the complaints were relayed to the Natural Resources Division (*Subprocuraduría de Recursos Naturales*) of Profepa for consideration in any inspection measures to be carried out.

59. It should be noted that this division implemented the "Tren Maya inspection plan in the areas of environmental impact, forests, wildlife, and pollution sources," which provides for environmental impact and forest-related site visits for every section of the Project. The purpose of these visits is to verify compliance with the conditions imposed by Semarnat, as well as to inspect the construction work being performed by suppliers and contractors; another purpose is to verify compliance with any safety measures, urgent measures, or corrective measures that may have been ordered. To date, as the first part of the above-mentioned plan and in view of the magnitude of the Project, visits have been made to sections 1, 2, 3, and 4, where various facts were identified and reviewed to determine whether to issue the corresponding notices of irregularities or violations (*acuerdos de emplazamiento*).

60. In view of the foregoing, the CEC Secretariat is hereby informed that the citizen complaint procedure is still

²⁵ MX-015 and MX-017.

ongoing; that is, it is pending. Likewise, the Party notes that the Profepa authorities have been named as the responsible authorities in various amparo ongoing proceedings in which the challenged act is Profepa's alleged failure to fulfill its duties.

61. Therefore, the Party informs the Secretariat that the matters relating to the enforcement of Article 4, fifth and sixth paragraphs, of the Constitution; LGEEPA Articles 5 paragraphs III, VIII and XI, 162, 170, 189, 192, 193, and 194; LGDFS Articles 154 and 155 paragraphs VII and XII; LGVS Article 107, and CPF Article 418 paragraphs I and III are the subject of various pending administrative and judicial proceedings that relate to the central assertions of the submission and to the effective enforcement of these legal provisions, whose resolution would also help resolve the matters raised in the submission. For this reason, pursuant to USMCA Article 24.27(3)(a), the CEC Secretariat is requested not to continue with its review of the submission.

(b) Any other information that the Party wishes to provide

62. The Submitters assert as follows: "No risk study concerning fuel transportation and service stations (gasoline, other hydrocarbons, and gas or fuel stations). This would ENDANGER THE INTEGRITY AND INDEED THE LIFE of persons in the event of an accident, which was not acknowledged or established in the EIS-R. This represents a violation of the provisions obligating it to submit all information and studies of the entirety of megaproject's works and activities for comprehensive assessment."²⁶

63. In this regard, it must be specified that there are Mexican Official Standards (*Normas Oficiales Mexicanas*—NOM) that comprehensively regulate the activities in question. Anyone intending to carry out such activities must strictly adhere to these standards in order to obtain prior approval from the competent authority.

64. In relation to the foregoing, in Phase 1 of the "Tren Maya" project, it is indicated that there will be three diesel storage sites for the operation of the locomotives for the entire project: Mérida (five 60,000-litre tanks, for a total capacity of 300,000 liters), Escárcega (two 60,000-liter tanks, for a total capacity of 120,000 liters), and Tulum (four 60,000-liter tanks, for a total capacity of 240,000 liters). In addition, it is stated that the Project will comply with the applicable Mexican Official Standards as regards location, installation, distribution systems, transfer pumps, piping, vapor recovery, fuel dispensers, and fueling systems, pursuant to NOM-005-ASEA-2016.

65. Similarly, the Submitters note an alleged "threat to communities' human right to water, with the prospect of contamination and irreversible impacts on subterranean rivers, caves, cenotes, and the aquifer in the event of any soil collapse or fracturing that causes a spill of all the fuel onto highly permeable soil."²⁷

66. In this regard, the Party notes that, as stated by the Developer, water availability in the Yucatán Peninsula is a function of the volume of water stored in the subsoil, where groundwater storage depends in part on the reference evapotranspiration. In dry years, the annual water budget is negative, while in rainy years the balance becomes positive. Some estimates suggest that the effective recharge coefficient (that is, precipitation water that reaches the water table) in the peninsula amounts to approximately 23% of the mean annual precipitation in rainy years, with negative values in dry years and with fluctuations between 8 and - 8 in average years.

67. In particular, in the Project zone one finds that the areas with greatest recharge are those characterized by having shorter, less dense vegetation. Similarly, the discharge areas are located close to the coast, where the water table is shallow in order to facilitate access of vegetation and groundwater catchment.

68. In view of these considerations, it is clear that recharge of the aquifer on which Section 5 of the Tren Maya will lie occurs from zones further from the situated Project route, due to rapid infiltration of precipitation into the limestone and to the consequent formation of underground watercourses discharging into the ocean. The volume likely to be altered by the project would be insignificant relative to the regional outflow from the Yucatán aquifer,

²⁶ Submission at 13.

²⁷ Ibid. at 14.

so no risk to the communities' rights of access to water is foreseen.

69. In addition, the Developer stated that any necessary preventive measures would be taken into account during the construction process, in order to avoid contamination of either surface water or groundwater. It further stated that the "Playa del Carmen" and "Tulum" passenger stations would use a pumping system and the necessary connectors to pump their wastewater to the Saastun-ha and Bicentenario treatment plants for treatment along with municipal wastewater.

70. Moreover, the Submitters asserted that there was a "lack of information and studies for wastewater treatment, since they admit that the design of the treatment plans has yet to be completed, and we remind you that one of the main causes of soil and aquifer contamination is the absence or inadequacy of wastewater treatment."²⁸

71. On this point, the approvals for each of the sections are conditional on the Developer's submission of a detailed description of the type of wastewater treatment plants to be built and operated prior to their being commissioned. The purpose of this condition is twofold: first, to ensure that wastewater will in fact be treated, and second, to analyze the effectiveness of the proposed treatment. The plants must meet a set of requirements to be set forth in each approval, meaning that the project will not be a source of aquifer and soil contamination. It was also proposed that the already existing treatment plants be used to treat wastewater from the Project.

72. The Submitters also asserted that there was "no information about water disposal and supply for the operation of the megaproject; they say that the water will come from the municipal waterworks, but there is no available infrastructure in that part of the forest, which will make it necessary to build other structures that are not being assessed."²⁹

73. It should be mentioned in this regard that the Project, in view of its nature, does not entail economic activities of any type, neither housing nor extractive development, that could lead to any impact on bodies of water, and thereby interfere with the water budget in the region or the availability of water.

74. Furthermore, according to the Developer, the water that will be required for the formation of embankments during the site preparation and construction phase will be obtained via pipes, which will carry water, preferably treated water, from sites distant from the workplace for use in construction activities. It is also envisioned that awareness campaigns be run for foremen so that efficient use of this resource is made.

75. On another note, during the operating phase of the Project and its stations, water-saving fixtures and accessories will be employed in order to ensure that water is used as efficiently as possible. Measures will also be taken to determine the feasibility of collecting and possibly reusing rainwater.

76. Concerning species habitat, the Submitters asserted that there would be: "A loss of habitat for endangered species. The passage of the Tren Maya through the Mayan forest of the Yucatán Peninsula threatens to fragment the ecosystems that are the habitat for a great number of species, many of them endangered. The planned wildlife crossings are insufficient to prevent loss of habitat and displacement of species by the Project and by new housing, commercial, and industrial developments as well as irregular settlements driven by the Tren Maya megaproject."³⁰

77. In response, the Party wishes to point out that the Tren Maya project as a whole (Phase 1, section 4, sections 5 north and south, section 6, and section 7) includes the construction of 466 wildlife crossings and the implementation of several drainage works that will have the same purpose. In Section 5 South specifically, the plan is to build thirty (30) wildlife crossings along with (6) drainage works, with a view to achieving interconnectivity between ecosystems.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

78. According to what the Developer stated in its six environmental impact statements, there is no plan to build structures along the length of the Project that would contribute to the displacement of fauna or to the loss of its habitat, nor is there any plan to build irregular settlements, industrial zones, or housing projects.

79. The Submitters assert that, “contrary to the actions of the responsible authorities with the granting of the Order and the ‘provisional approvals,’ it must be recalled that water is a resource within the federal public domain, a resource that is vital, vulnerable, and finite, having social, economic, and environmental value, the preservation of whose quantity, quality, and sustainability is a fundamental task of the state and of society, as well as a priority and a matter of national security. Therefore, the conservation, preservation, protection, and restoration of water quantity and quality is a matter of national security, and the unsustainable use thereof, as well as any adverse ecological effects, must be avoided.”³¹

80. On this point, the Party specifies that the National Water Commission (*Comisión Nacional del Agua—Conagua*) reported that regarding the enforcement of LAN Articles 7 BIS, paragraph I, and 14 BIS 5, paragraphs I, IX and XX, in relation to the public interest, to avoid possible impacts deriving from any work intended to be carried out, the developers must hold proof of technical viability in order to guarantee that water resources are used in the public interest. This occurred with the production of the technical opinion³² in relation to the Tren Maya Section 5 South project, in response to file no. SGPA/DGIRA7DG-0342-22 of 19 May 2022.

81. Concerning the principles undergirding national water policy that are contained in LAN Article 14 BIS 5 and pursuant to its final paragraph, these principles are fundamental and must be observed in harmony with the other provisions of that article. In particular, paragraph I of the article provides that water is a resource within the federal public domain, a resource that is vital, vulnerable, and finite, with social, economic, and environmental value, the preservation of whose quantity, quality, and sustainability is a fundamental task of the state and of society, as well as a priority and a matter of national security, and it must be emphasized in this regard that Conagua adhered to this principle when it issued its technical opinion, which foresees no impact whatsoever.

82. Finally, the criterion of paragraph IX of the same article [LAN Article 14 BIS 5] provides that the conservation, preservation, protection, and restoration of water quantity and quality is a matter of national security, and that any unsustainable use, as well as any adverse ecological effects, must be avoided. In this regard, the production of the technical opinion amounts to full compliance with this provision, since the technical opinion did not indicate the possibility of any impacts. In regard to paragraph XX of the same article, it provides that the informed and responsible participation of society is the basis for better management of water resources, and particularly their conservation; therefore, environmental education, especially with respect to water, is essential. It should be mentioned that this paragraph, in relation to the LAN provisions, does not provide for societal participation in the production of a technical opinion; moreover, the paragraph in question refers to environmental education on the subject of water.

83. It may be derived from the foregoing considerations that the Mexican environmental authorities effectively enforced the environmental law, and for this reason the CEC Secretariat is requested not to continue its review of the submission.

C. CONCLUSIONS

84. As specified in this Party Response, the works and activities relating to Tren Maya Section 5 South have had the due participation of the Mexican environment authorities, and the following provisions have been effectively enforced during the assessment and approval process:

- a) Article 4, fifth and sixth paragraphs, of the Constitution;

³¹ Ibid. at 8.

³² MX-019.

- b) LGEEPA Articles 5, paragraphs III, VIII and XI, 15, paragraph XII, 28, paragraphs I and VII, [and the further Articles] 34, 162, 170, 189, 192, 193, and 194;
- c) LGDFS Articles 93, 97, 154, and 155, paragraphs VII and XII;
- d) LGVS Articles 5, paragraph I, 58(a), and 107;
- e) LAN Articles 7 Bis, paragraph I, and 14 Bis 5, paragraphs I, IX and XX, and
- f) CPF Article 418, paragraphs I and III.

85. Nevertheless, organizations and citizens have filed various amparo motions before the Judicial Branch of the Federation, which are, as indicated in the respective appendices, currently pending.

86. In this context, it should be noted that the Constitution establishes the division of powers as a fundamental idea (Article 49), so that the country may be governed with justice, without anyone abusing power; thus, public power is divided into three branches with different functions. Pursuant to the Constitution, the branches of the federal government are the legislative (Articles 50–79), the executive (Articles 80–93), and the judicial (Articles 94–101 and 103–107).

87. The Judicial Branch of the Federation is composed of the Supreme Court (*Suprema Corte de Justicia de la Nación*), the Electoral Tribunal (*Tribunal Electoral*), the circuit courts, and the district courts. It is the branch in charge of interpreting laws; meting out justice; defending the constitutional order; resolving conflicts between individuals, where federal matters are at issue, and between public authorities; and protecting the human rights enshrined in the Constitution and in international treaties. That is, the Judicial Branch has the power to judge the actions of the other branches where these are unconstitutional, and as such, it serves as a check on the other branches. Hence, it is the branch that is competent to decide the pending amparo cases, concerning law enforcement in relation to the construction of Tren Maya Section 5 South.

88. Therefore, in view of the existence of pending amparo proceedings and the stipulations of Article 24.27(4)(a), the CEC Secretariat is hereby respectfully requested not to continue its review of this submission.