



# HANSA URBANA'S CABO CORTÉS PROJECT IN BAJA CALIFORNIA SUR

INVESTOR RISK ADVISORY





## Investment Summary

The Spanish developer Hansa Urbana intends to build a large-scale tourism and real estate complex called Cabo Cortés on the southeastern tip of Mexico's Baja California peninsula. Due to its proposed scope and scale, the project could result in irreparable harm to vulnerable protected areas and endangered species, as well as negatively impact local communities. Environmental and social sustainability is necessary not only for the protection of local ecosystems and communities, but also to ensure the long-term financial success of a coastal tourism project itself. Potential investors must be fully aware of the serious concerns and risks associated with Cabo Cortés.

The size and complexity of the project, coupled with Hansa Urbana's current financial situation, ensures that Hansa Urbana will require third-party investment to make the Cabo Cortés proposal a reality. The completed Cabo Cortés development, as proposed by Hansa Urbana's subsidiary, Hansa Baja Investments, would include 3,814 hectares of land in the arid East Cape region of the Peninsula, roughly 80 kilometers from the Los Cabos tourism hub. The plans include lots for 15 hotels with the equivalent of approximately 30,000 hotel rooms, two 27-hole golf courses, two million square feet of commercial and office space, a 490-slip marina on the Gulf of California, a private

jet strip, desalination and water treatment plants, and additional infrastructure.<sup>1</sup> The company envisions building Cabo Cortés in five phases over the course of 30 to 40 years at a cost of approximately US \$2 billion.<sup>2</sup> The sheer scope and size of the project renders it a brand new city, comparable to Cancun or the area known as "Los Cabos" (San José del Cabo plus Cabo San Lucas).<sup>3</sup>

Significantly, the Cabo Cortés complex would be 11 kilometers directly north of Cabo Pulmo National Marine Park, a thriving seven-fingered coral reef that has been hailed as "the most robust marine preserve in the world."<sup>4</sup> Cabo Pulmo National Marine Park is



a United Nations Educational, Scientific and Cultural Organization World Heritage Site and a Ramsar Wetlands of International Importance Site.<sup>5</sup> Home to a unique array and quantity of species, Cabo Pulmo is the only living coral reef in the Gulf of California. As this biodiverse reef has recovered under its protected status, snorkeling and diving among its abundant marine mammals, sea turtles, and colorful reef fish have become a major tourist draw and the centerpiece of the area's economy. A development of the type and scale of Cabo Cortés, however, threatens the coral reef, the very economic engine that is a major tourism attraction for the region.

Credit for the successful conservation of the Cabo Pulmo reef is principally due to the local community, which led efforts to protect the reef by requesting the government declare Cabo Pulmo a National Protected Area, after rampant overfishing nearly decimated the marine life there. The local community remains fiercely committed to protecting Cabo Pulmo, as protection has meant revitalization of the region's fisheries and growth of eco-tourism, on which those communities depend. The local people are opposed to any project that would threaten the park's sensitive marine life.

The Spanish developer Hansa Urbana has controlling stakes in four Mexico-based companies, through which it finances and develops its Mexican projects: Hansa Baja Investments, Hansa México, Operadora Cabo Cortés, and Hotelera H.M.<sup>6</sup> The Spanish bank Caja de Ahorros del Mediterráneo (CAM) owns 30

percent of Hansa Urbana, and also has significant stakes in the four Mexican companies listed above.<sup>7</sup> The financial ties between Hansa Urbana and CAM are, therefore, close and complex, and problems with the assets of one could also affect the other. Both have experienced financial difficulties in recent years, leading to serious consequences: Hansa Urbana had to trade ownership of its Mexican holdings to cover its debts to the CAM, and the CAM has been restructured and sold by the Central Bank of Spain.

In addition to the financial troubles afflicting the proponents of the Cabo Cortés development, the viability of the project is threatened by several factors in Mexico:

- The environmental concerns surrounding the project, due to its close proximity to the protected Cabo Pulmo National Marine Park; these include toxic nutrient release from the golf courses, pollution from increased water traffic, and sedimentation from marine dredging and construction;
- The expected demand Cabo Cortés would place on the region's already-taxed fresh water supply;
- Market risks in Baja California Sur, where a surplus of this type of facility already exists, and the tourism sector consequently has never approached full capacity;
- Legal irregularities with the project's environmental impact analysis and legal challenges to the permits already granted, some of which are already underway and could delay the project's operation for years, if not prevent it entirely;
- Political uncertainty due to questions about failings in the Cabo Cortés environmental impact assessment and the permits it received; and
- The low quality of Hansa Urbana's work to date on Cabo Cortés, its unsuccessful track record with several similar projects in Spain, and the allegedly illegal financial activities of both Hansa Urbana and CAM.

Potential investors in Hansa Urbana's proposed Cabo Cortés resort complex and other institutions considering tying themselves financially to the project, Hansa Urbana or CAM, need to be aware of the full range of risks associated with such an investment.



## Cabo Pulmo National Marine Park is a Critical Conservation Area

Cabo Pulmo is the northernmost coral reef in the eastern Pacific and, at around twenty thousand years old, may be the oldest and most important reef in the American Pacific.<sup>8</sup> It consists of a 7,111 hectare federally-protected area in the East Cape region, and is the permanent and seasonal home to a rich diversity of fish species, sea turtles, crustaceans, mollusks, chelonians, birds, and marine mammals.

After decades of irresponsible fishing practices degraded the marine ecosystem in Cabo Pulmo, local communities worked with the Mexican government to establish Cabo Pulmo as a protected area in 1995, and, then as a National Marine Park in 2000. In 2005, it became a UNESCO World Heritage Site due to the reef's age and its key role as habitat for species under the Environmental Protective Risk category in the Official Mexican Regulation for native Mexican flora and fauna species.<sup>9</sup> It was also declared a Ramsar International Wetlands Site in 2008.

The conservation of Cabo Pulmo is an example of the local community electing to stop destructive fishing practices and reorient its economy to eco-tourism, in order to preserve the ecosystems of the area. They also voluntarily created a strict no-take zone within park boundaries. The recovery of the reef since it first gained protected status in 1995 has been a success on an international level, with the park's marine life increasing 463 percent between 1999 and 2009.<sup>10</sup>

Cabo Pulmo is a crown jewel of conservation efforts in Mexico, and the restored reef is critical to maintaining fish stocks in the Gulf of California.

The size of the proposed Cabo Cortés development and its proximity to Cabo Pulmo National Marine Park represent a grave threat to the coral reef ecosystem and the local communities who depend on the reef for their livelihoods. In response to concerns expressed by local citizens, international scientists, and non-governmental organizations, representatives from UNESCO, the Ramsar Convention, and the International Union for the Conservation of Nature (IUCN), traveled to the East Cape Region in November 2011 to investigate the potential damage Cabo Cortés would cause to Cabo Pulmo.<sup>11</sup> The risks Cabo Cortés poses to the marine environment also threaten to undermine the single claim this development could make to distinguish itself from every other big resort in Baja: the experience of snorkeling or diving a pristine and robust coral reef.



# The Cabo Cortés Development is Risky and Economically Unsound

The Cabo Cortés project is fraught with environmental, market, political, and legal risks. The project is also the subject of a local and global campaign that is highlighting the serious concerns surrounding the project’s environmental and social sustainability. Thus, the reputational costs of investing in Cabo Cortés would be high and international in scope. The multitude of risks inherent in the Cabo Cortés project threatens its long-term viability and makes this a risky investment.

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## 1 Environmental Risks Related to Direct Physical Impacts on Cabo Pulmo

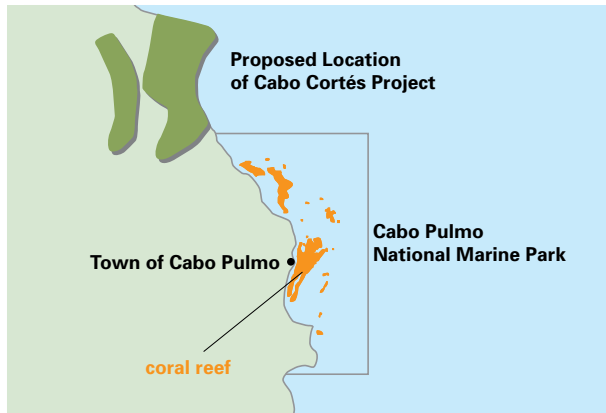
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Investors deserve complete transparency on the variety and gravity of impacts that Cabo Cortés would impose on Cabo Pulmo’s plant, animal, and human populations, as they form the basis for legal and administrative challenges to the project that could prevent its completion and expose investors to reputational risk for being associated with the project.

### 1.1 REEF DESTRUCTION FROM POLLUTION, SEDIMENTS, AND FERTILIZERS

The fragility of corals and the vulnerability of coral reefs to human activity are well documented. Corals are very sensitive to pollution, sedimentation, water temperature, turbidity, and salinity. Changes in any one of these characteristics can limit corals’ access to necessary resources, such as light, space, and food.<sup>12</sup>

The construction and operation of key components of Cabo Cortés would alter those precise characteristics of the sea water flowing through Cabo Pulmo



Map provided for illustrative purposes only

National Marine Park. Specifically, building the marina, breakwaters, and access canals would necessitate dredging and underwater construction, which would stir up sediments and introduce pollutants into the sea. Fertilizers and nutrients used to maintain the multiple golf courses and other irrigated green areas are toxic to coral reefs when they run off into coastal waters.<sup>13</sup> Pollution from boats in the 490-slip marina and the variety of other human water activities that resorts provide would also threaten the health and existence of the marine park. Effluence from the planned desalination plant would introduce highly-salinated brine and potentially other substances into the water.

The environmental impact assessment (EIA) for Cabo Cortés states that sea currents in the area only run from south to north. Consequently, it concludes the the pollution and changes in water quality caused by Cabo Cortés would not affect Cabo Pulmo. Unfortunately, this EIA is inadequate in its treatment of the full range of environmental risks that will likely result from the Cabo Cortés development. Hansa Baja Investment’s consultants based their data about littoral transport and coastal dynamics in the East Cape Region on conclusions from a two-day field trip made by consultants more than two decades ago, supplemented by aerial photographs.<sup>14</sup> Yet, scientific research conducted since the 1990s demonstrates that the currents in the area change directions during different seasons, flowing both south to north and north to south.<sup>15</sup> Hansa Baja Investments did not consider this research in its EIA, and, consequently, critically underestimated the extent of the impacts its project would cause to Cabo Pulmo.<sup>16</sup>

The Mexican Secretariat of Environment and Natural Resources (SEMARNAT) recognized the discrepancy in the data and announced in November 2011 that it would not grant any new permits to Cabo Cortés until 2013, so that it can review the latest scientific research about currents and coastal dynamics in the area, and make an informed decision about the project’s likely impacts. “No other permits will be granted until we know more about the marine currents,” said the head of SEMARNAT, Juan Elvira Quesada.<sup>17</sup>

## 1.2 THREATS TO VULNERABLE AND ENDANGERED SPECIES

Hansa Urbana’s Cabo Cortés development threatens to affect a wide array of species in Cabo Pulmo National Marine Park. The park is home to 226 of the Gulf of California’s 891 species of fish, 154 species of marine invertebrates, and 25 species of corals. The IUCN identified sea lions, five of the world’s seven endangered species of sea turtles, bottlenose, spinner, and rough-toothed dolphins, and humpback, fin, and Bryde’s whales inside the park.<sup>18,19</sup> As described earlier, the construction and operation of Cabo Cortés would drastically alter the environment in which these marine species now thrive.

The EIA for Cabo Cortés identified ten bird species, nine reptilian species, six mammalian species, and two species of flora within the project’s property that are categorized as “in danger of extinction,” “threatened,” or “subject to special protection,” according to Mexican Regulation.<sup>20</sup> Causing a loss of habitat for species registered as such is illegal in Baja California Sur.<sup>21</sup> The construction and operation of Cabo Cortés could, therefore, cause a loss of habitat for these species and be found illegal if challenged. Non-governmental organizations are already filing legal challenges to the project based on these facts.

Among the marine animals listed in the EIA are the five species of sea turtles that inhabit the area. Specifically, Cabo Cortés would affect the endangered leatherback and olive ridley turtles that nest on the beaches stretching from Cabo Pulmo to the Cabo Cortés property.<sup>22</sup> Both species are considered “in danger of extinction” by the Mexican government,<sup>23</sup> and leatherback turtles are listed on



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## 2 Risks Related to Limited Fresh Water Resources

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Freshwater is scarce in the deserts of Baja California Sur. Cabo Cortés' plans are expected to put a major strain on the already limited supply of freshwater for the local communities. The development can also lead to salt water contamination of the fresh water supply, and cause run-off into, and sedimentation of, the marine environment of the Cabo Pulmo region. A substantial and reliable source of fresh water is critical to the commercial viability of any project in this arid region, and this is a particular challenge for a development the size of Cabo Cortés. For this reason, Hansa Baja Investments proposes to get the water needed for its complex from two distinct sources: the Santiago Aquifer and an on-site desalination plant.<sup>27</sup>

Appendix 1 of the Convention for International Trade in Endangered Species of Wild Flora and Fauna.<sup>24</sup> The Mexican government cites anthropogenic impacts, such as changes in vegetation cover, habitat fragmentation, increased traffic, and construction of infrastructure, as particularly impacting species that are "in danger of extinction." Artificial lighting is proven to affect marine turtle nesting patterns and hatchling survival.<sup>25</sup> For these reasons, among others, it is illegal in the Municipality of Los Cabos to build any type of construction in sand dunes.

Non-governmental organizations have filed legal challenges to the project based on the negative impacts Cabo Cortés would have on the endangered leatherback and olive ridley sea turtles via the construction of access canals and ancillary infrastructure on the dunes, as well as the operation of the resort [See Section 4.2: "Prohibition of Construction on Sand Dunes," page 10]. Although Hansa Baja Investments outlined a mitigation plan for these impacts that is largely based on attempting to limit light emissions during turtle nesting seasons, the sheer quantity and height of the proposed buildings and infrastructure on and near the beach mean that light emissions would most likely reach and affect the beach.<sup>26</sup>

### 2.1 FRESHWATER SCARCITY AND AQUIFER SUPPLY

Two of the East Cape Region's three aquifers—San Bartolo and Cabo Pulmo—are already considered "in equilibrium" by the National Water Commission (Comisión Nacional del Agua, or CONAGUA),<sup>28</sup> indicating that they are no longer "with available water." In short, enough concessions have been granted for both aquifers, that neither of them have any more water available. The Santiago Aquifer is the only one of the three still available for concessions, and yet the actual supply quantity of this aquifer is unknown. CONAGUA's most recent study of the Santiago Aquifer appears to have been in 2002, although that is difficult to confirm.<sup>29</sup> According to CONAGUA's 2009 estimates, 15.09 million cubic meters annually (Mm<sup>3</sup>/y) of the Santiago Aquifer's supply had been granted.<sup>30</sup> Well over one-quarter of that amount belonged to Hansa Baja Investments, whose concessions equal 4.5 Mm<sup>3</sup>/y, to provide Cabo Cortés with fresh water. The clear need for updated and accurate data about the Santiago Aquifer's real catchment area, recharge capability, and existing extractive demands make the size of the Hansa Baja Investment's concessions worrisome to the growing local communities, who rely on the Santiago Aquifer for their present and future water needs.<sup>31,32</sup>

Hansa Baja Investments would extract the concessioned water from the Santiago Aquifer for Cabo Cortés via three wells. The coordinates for these wells, as stated in the concession title, show the wells would be located between one and three kilometers from the coast, much closer than usually thought safe for freshwater wells.<sup>33</sup> This could lead to salt-water contamination of the aquifer.

Finally, the inter-aquifer water transfers planned by Hansa Baja Investments could damage Cabo Pulmo's coral reef by altering key characteristics of the marine environment. The company plans to send its 4.5 Mm<sup>3</sup>/y from the Santiago Aquifer, via a 17 kilometer-long aqueduct to Cabo Cortés, which is located in the Cabo Pulmo Aquifer catchment.<sup>34</sup> The Cabo Pulmo Aquifer has an estimated annual recharge of 1.7 Mm<sup>3</sup>/y. The transfer of this high volume of water to the Cabo Pulmo catchment, which is more than twice its normal recharge rate, is likely to cause significant disruption of surface flow discharge and sediments into Cabo Pulmo's coastal waters, negatively affecting the reef.

Mitigation or resolution of each of these scenarios could result in unexpected and high costs for investors. Reputational risks for Hansa Baja Investments and its financial backers could also be severe if the fresh water supply for local communities were adversely impacted.

## 2.2 UNCERTAINTY ABOUT THE DESALINATION PLANT

In addition to the Santiago Aquifer, Cabo Cortés would rely on a desalination plant to supply its fresh water, but that plant's approval is uncertain.<sup>35</sup> The permitting agency, SEMARNAT, was unsatisfied with the description of the plant in the Cabo Cortés environmental review, and requested a new individual EIA for the plant.<sup>36</sup> Hansa Baja Investments still needs to deliver this EIA.

The plant, as described in the original EIA, would likely cause changes in Cabo Pulmo's water quality, causing additional harm to the coral reef. The discharge point for this hyper-salinated water would be at a depth of seven meters, or approximately the same depth of Cabo Pulmo's coral reef, which is a mere two kilometers directly south of the planned

discharge point.<sup>37</sup> In addition to brine, desalination plant effluence can also contain a variety of chemicals and heavy metals.<sup>38</sup> During times when currents flow from the north toward the reef, the brine water could, therefore, flow directly into the reef's zone, changing the water's salinity and affecting the coral reef. The damage that desalination plant effluents can cause on sensitive ecosystems is well-documented.<sup>39</sup> The intake of seawater into a desalination plant can also significantly threaten marine life.<sup>40</sup>



To avoid causing environmental harm, careful, site-specific studies need to be conducted before and during a plant's operation. Yet, to date, Hansa Baja Investments has not publically provided this detailed information, only the general descriptions included in the EIA, which SEMARNAT found insufficient to warrant a permit. The technical opinion that the National Commission of Natural Protected Areas delivered in connection with the EIA stated: "One of the principal worries is that the studies' conclusions about the dispersion patterns of the salt water plume are neither significant, nor representative of the area's hydrodynamics. Also, the assertion they make that the currents only run towards the north is sufficiently weak and lacking concrete measurements."<sup>41</sup>



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## 3 Market Risks in Baja California Sur

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Hansa Urbana has planned to build Cabo Cortés near an area known for being a major luxury tourism destination, particularly among North Americans: Los Cabos, which is comprised of Cabo San Lucas, San José del Cabo, and the “corridor” between the two. Despite its reputation, however, the consistently low-occupation rates for existing hotels and real estate developments demonstrate that the region’s tourism market is not a secure investment opportunity. In addition, a recent report by the Center for Responsible Travel (CREST) that looks at coastal tourism development in Mexico indicates that globally, consumer demand for sustainable tourism that preserves the environment is strong and growing, relative to traditional large “sun and sand” resorts.<sup>42</sup> Potential investors should be aware of the uncertain state of the market for large, unsustainable coastal resorts in Baja in particular, and in Mexico in general.<sup>43</sup>

Tourism is a key economic driver in the state of Baja California Sur, but most activity is limited to the southern tip of the Baja California Peninsula, in the Cabo San Lucas—San José del Cabo Corridor. In this area, the government carried out a decades-long effort to develop tourism.<sup>44</sup> Notwithstanding the government’s efforts, the tourism sector in Los Cabos is far from financially secure. Despite the many world-class hotels that have been built over the past 20 years, and that continue to be built, the May 2011 bulletin from the Secretary of Tourism and the Los Cabos Hotels Association states that “in the concrete case of the Los Cabos area, hotel occupancy is shown to be a significant problem: in 2009 it reached 49.5 percent and it seems that although this number grew in 2010, (not above 55 percent), it is far from the historic high it reached in 2007, 65 percent.”<sup>45</sup> The same May 2011 bulletin further points out that other tourism services aimed at the clientele of the area’s four- and five-star hotels, such as guides, restaurants, artisanal crafts sales, and local commerce, experience “an important level of under-utilization.” In addition, a July 2011 study conducted by the international travel website Expedia

showed that 80 percent of tourists to Los Cabos do not return.<sup>46</sup> Despite significant efforts to boost occupancy numbers, data from the Mexican Tourism Promotion Council shows that in 2011 Los Cabos managed to fill less than 59 percent of its rooms.<sup>47</sup>

The consistently low-occupancy rates in Los Cabos may be related to growing consumer demand for alternatives to traditional, all-inclusive resorts, and a heightened desire for environmental sustainability, even during travel. In its newest report, CREST points out that the United Nations World Tourism Organization first predicted in 2001 that over the next two decades “experiential” tourism was the sector that would grow most quickly, while “sun and sand” tourism was mature, and growth would remain flat. Furthermore, the report highlights that recent market surveys conducted by *Conde Nast Traveler* and the World Travel and Tourism Council indicate that a majority of surveyed travelers believe that hotels and resorts should be responsible for protecting the surrounding environment.<sup>48</sup> Concerns with the impact of a tourism complex of the profile of Cabo Cortés could conceivably deter travelers from visiting.

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## 4 Legal Risks Could Further Delay or Halt the Project

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Legal irregularities and challenges surrounding the review process of the Cabo Cortés resort could prevent it from being built, or, at minimum, could result in significant delays, adding to the risks and costs of the project. The Cabo Cortés project has faced multiple legal challenges since its EIA was approved by SEMARNAT in September 2008. Members of the community and local civil society organizations filed appeals to that authorization, arguing that the EIA failed to properly assess the impacts that Cabo Cortés would have on Cabo Pulmo National Marine Park. Due to these arguments, SEMARNAT overturned the authorization in August 2010. In January 2011, after Hansa Baja Investments submitted new information to the Cabo Cortés EIA, SEMARNAT re-authorized the permits for several components of Cabo Cortés but not others.<sup>49</sup> Non-



governmental organizations and community members have filed legal actions which, if ruled in their favor, would nullify the 2011 authorization SEMARNAT granted to Cabo Cortés. The existing and likely future legal challenges to the project permits are important for potential investors to consider.

#### 4.1 INCOMPLETE PERMITS AND DELAYS

Plans for the desalination plant, water treatment plant, and reforestation program, among other components, were found insufficient to warrant approval in 2011. SEMARNAT issued 20 conditions that the company must complete in order to build Cabo Cortés. These conditions include demands for extensive new studies and regular reports, which SEMARNAT admitted would be “costly.”<sup>50</sup>

Hansa Baja Investments was granted until August 2011 to complete several of those key conditions. More than six months after the August 2011 deadline, four of those conditions remain unaddressed. The unaddressed conditions include: a plan for temporary waste storage, proposed reforestation activities, a program to monitor coast line evolution and littoral erosive processes, and a program to monitor the salt wedge estuary.<sup>51</sup> Non-governmental organizations are challenging the entire resolution based on this lack of compliance with those four conditions.

#### 4.2 PROHIBITION OF CONSTRUCTION ON SAND DUNES

According to Criterion I.10 of the Ecological Ordinance of the Municipality of Los Cabos, “no type of construction on the dunes for the length of the coast will be permitted.”<sup>52</sup> Although the prohibition of construction on sand dunes along the coast in the interest of preserving sensitive and important natural habitat is clear, Hansa Baja Investments nevertheless has planned several key components of Cabo Cortés on sand dunes, namely the marina and access canals.<sup>53</sup> Violating the local Ecological Ordinance in this manner made the project and its permits vulnerable to administrative and judicial challenges. The latest administrative challenge on this point is still under review by the Federal Tax and Administrative Court.<sup>54</sup>

#### 4.3 LOSS OF HABITAT FOR ENDANGERED AND PROTECTED SPECIES

The Mexican government regulation NOM-059-SEMARNAT-2001 establishes protection categories for threatened wild flora and fauna species native to Mexico. In 2010, this regulation was updated, reassigning several species on the list to categories of higher protection, including species in the Cabo Cortés project area.<sup>55</sup> Development of the resort complex would likely result in loss of habitat for these species, and therefore, would constitute a violation of the national regulation. As indicated in Section 1.2 (page 6), this alleged violation is the focus of multiple appeals and lawsuits.

Mexico’s General Wildlife law also operates on the principle of *in dubio pro natura*, or the “precautionary principle,” which stipulates that when there is the threat of grave or irreversible damage to the environment, the lack of scientific certainty is not a sufficient reason to delay the adoption of effective measures to prevent the degradation of the environment.<sup>56</sup> This fundamental principle was not applied during the environmental evaluation of Cabo Cortés, leaving the project’s permits open to litigation.



#### 4.4 ILLEGAL ACTIONS IN CABO CORTÉS' REVIEW

The Municipality of Los Cabos has authority over decisions relating to zoning and land use changes within its borders. This authority is granted under the General Law of Ecological Equilibrium and Environmental Protection (LGEEPA), the Federal Law of Administrative Procedure (LFPA), and Ecological Management Program for the Municipality of Los Cabos (POET-LC).<sup>57</sup> It can, therefore, be alleged that SEMARNAT acted outside its authority when it authorized the change in land use for several of the plots within the Cabo Cortés project.

In addition, the January 2011 resolution from SEMARNAT approved several components of Cabo Cortés, namely terrestrial ones. Marine components, such as the marina and desalination plant, remain undecided. The Los Cabos Coastkeeper organization is challenging this partial review and approval in a federal court, based on the argument that the national law does not permit fragmented reviews of project.<sup>58</sup>

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## 5 Political Risks in Mexico

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The environmental concerns and legal problems with Cabo Cortés's EIA and its review have garnered attention within the government in Mexico, leading to official investigations in the Mexican Senate. If the investigators find evidence of misconduct or illegal actions during the Cabo Cortés project's EIA

review process, enormous pressure could be put on the administration to overturn the existing permits and cancel the project outright. Such actions are not unheard of in Mexico; in 2000 former President Zedillo cancelled a highly controversial saltworks proposal in Baja California at Laguna San Ignacio.<sup>59</sup>

### 5.1 DISSENT WITHIN SEMARNAT

Technical agencies within SEMARNAT expressed their clear disapproval of the Cabo Cortés project, based on the environmental impacts they believed Cabo Cortés would have on Cabo Pulmo National Marine Park. Their strong public statements could have a far-reaching impact on the situation because they uphold the arguments against, and legal challenges to, the Cabo Cortés project.

The General Directorate for Environmental Policy and Regional and Sectoral Integration (DGPAIRS), an agency within SEMARNAT's Sub-Secretariat of Planning and Environmental Policy, submitted its technical opinion of the Cabo Cortés EIA to the SEMARNAT agency that conducted the EIA review, the General Directorate of Environmental Risk and Impact (DGIRA), during the review process in April 2008. The document highlighted that SEMARNAT should uphold the municipal and regional environmental ordinances, and that Cabo Cortés would violate said ordinances, saying the project "is not consistent" with those ordinances.<sup>60</sup>

The National Commission for Natural Protected Areas (CONANP) also released a technical opinion of the Cabo Cortés project's EIA in June 2008 during the review process. The document identified



instances where the EIA omitted key information, used factually incorrect data, and employed deficient methodologies. The opinion states: “the environmental impact assessment presented...has neither considered nor analyzed in depth the changes or potential impacts that will occur inside the area of the marine park, nor an estimation of the impacts of the construction and operation of the Project, nor the derivatives of the activities originating with the arrival of alien workers during the phases of development, inhabitants, and visitors that the operational project would bring.”<sup>61</sup>

## 5.2 MEXICO’S SENATE QUESTIONS THE AUTHORIZATION OF CABO CORTÉS

Due to the discontent of the local communities and heightened national and international attention to the controversy surrounding Cabo Cortés, in September 2011 the Mexican Senate called on the Secretary of Public Administration to investigate the permits granted to Cabo Cortés.<sup>62</sup> The Senate is now waiting for the Secretary of Public Administration to disclose the results of its investigations. This information should reveal if granting the permits violated Mexican law and if any public officials should be sanctioned.<sup>63</sup>

In February 2012, the Senate reiterated its concern about the project by calling for the head of the 2011 SEMARNAT to testify about the legality of the environmental permits already granted to Hansa Baja Investments for Cabo Cortés. The senators who initiated this action cited questions about the legitimacy of the project’s environmental review process, the company’s plan for water supply, and the project’s proposed construction on sand dunes as three key reasons for investigation.<sup>64</sup> No binding action would directly result from the investigation, but substantial political pressure could be put on the administration to cancel the existing Cabo Cortés permits if the Senators discover illegalities in the project’s EIA review process.

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# 6 Hansa Urbana is a Risky Corporate Partner

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The low quality of Hansa Baja Investment’s EIA for Cabo Cortés is reflected in the type and quantity of information that the Mexican regulatory authority found lacking when it issued the January 2011 resolution, and in the number of legal challenges to the project. The company’s poor planning is evidenced in ineffective documentation of what amount to major environmental and social concerns. Further evidence of the company’s lack of effectiveness is that SEMARNAT has halted the permitting process based on the insufficiency of documentation of impacts. As highlighted by the status of Hansa Urbana’s projects in Spain, investors should be aware that Cabo Cortés is not the only Hansa Urbana project that suffers from what seems to be an inattention to detail and lack of transparency. Several of Hansa Urbana’s properties and projects in Spain are the subject of controversy and ongoing legal investigations. Furthermore, recent investigations into the Spanish bank Caja de Ahorros del Mediterráneo (CAM), which owns 30 percent of Hansa Urbana, revealed a number of allegedly illegal financial activities at the bank’s highest levels.

## 6.1 TAX FRAUD INVESTIGATIONS

A court in Alicante, Spain, began investigations into tax fraud allegations by Hansa Urbana in May 2010. The charges relate to the sale of a piece of land in Playa de San Juan by Hansa Urbana to a private real estate trader, for which the company sought an improper tax refund of EUR 6 million.<sup>65</sup> That investigation is still ongoing.<sup>66</sup>

## 6.2 FAILED TOURISM AND REAL ESTATE PROJECTS

In the Spanish province of Murcia, Hansa Urbana initiated three major real estate projects in the mid-2000s: Novo Carthago (Cartagena, Mar Menor), Puerto de Mazarron, and Puntas del Calnegre (Lorca). Together, they would include approximately 20,000

residential units.<sup>67</sup> The company is among the largest owners of residential land in the coastal plains of the region, and all its projects are located in protected areas, according to the Asociación de Naturalistas del Sureste (ANSE).<sup>68</sup> All three projects are now stalled by legal problems and the collapse of the Spanish housing market.<sup>69</sup>

Novo Carthago is the most well-known of these projects.<sup>70</sup> It involves the construction of 7,000 homes, two golf courses, and several hotels costing a total of EUR 1 billion, within territory that the European Union (EU) classifies as *Special Protection Area* in the *EU Directive on the Conservation of Wild Birds*, as well as a *Site of Community Importance* in the *EU Habitats Directive*.<sup>71</sup> The Ministries of Public Works and Agriculture raised objections to the project, based on an amendment to the Natural Resources Plan for Mar Menor, which reclassified the land from “agricultural” to “property.” In October 2007, the High Court of Justice began an investigation into the project, and required documentation from the Ministry of Sustainable Development regarding the reclassification. Novo Carthago remains stalled through early 2012.<sup>72</sup>

### 6.3 UNCOVERING OF FINANCIAL IRREGULARITIES, FALSIFICATION, AND LOOTING AT THE CAM

In July 2011, the Central Bank of Spain intervened with CAM and replaced its executive team in order to restructure the institution. Factors given by the Central Bank as leading to this intervention were: CAM’s liquidity problems, the low quality of its assets, deterioration of its profit margins, increased risk to incur losses, an impending insolvency situation, the lack of management capacity, and the absence of a realistic and sufficient restructuring plan.<sup>73</sup>

The Central Bank investigated CAM’s 2008 to 2011 activities and found systematic mishandling of the credit union’s finances through questionable deals and investments, and a lack of compliance with its own credit risk policies and controls.<sup>74</sup> The results of the Central Bank’s investigation, released in February 2012, also showed evidence of investor manipulation, accounting maneuvering, and gross misconduct at the bank’s highest levels.<sup>75</sup> As a result, the Central



Bank of Spain is pursuing disciplinary action against CAM’s top executives.<sup>76</sup>

Of particular concern are the direct investments CAM made into 65 privately held companies tied to the real estate and hotel sectors which led to losses of 1.01 million Euros—equivalent to a third of the funds contributed by the Central Bank of Spain.<sup>77</sup> A report from the Central Bank of Spain found that several of these complex transactions include speculative land deals, where the CAM acquired land at inflated prices, creating immediate returns for the partnering entity, in projects that later did not move forward.<sup>78</sup> It highlights the CAM’s relationship with Hansa Urbana, and the Cabo Cortés project in particular, as examples of such conduct.<sup>79</sup>

The Central Bank of Spain’s report makes reference to the privileged relationship between CAM and Hansa Urbana: CAM was a shareholder in Hansa Urbana as a result of the prior conversion of its loans to Hansa Urbana into equity. The report documents how this relationship was used by CAM to structure a number of intra-company transactions, in order to improve its 2010 bottom line by 40 million Euros, through accounting artifices based on very dubious valuations of the Cabo Cortés assets, property of Hansa Cabo, and the reclassification of CAM’s stake in Hansa Urbana in its balance sheet for income statement purposes.<sup>80</sup>



## Conclusion

Mexico's Cabo Pulmo National Marine Park is a conservation success story on a local, national, and international level. It is a natural treasure that the local community worked hard to restore and is committed to protecting. Yet the impact of the proposed Cabo Cortés tourism and real-estate complex could turn back the years of conservation efforts that brought the reef back to life—compromising the very element that would attract visitors. Simply put, the environmental and social sustainability risks associated with Cabo Cortés also cast a shadow over the long-term financial viability of this project.

As outlined above, aggressive expansion into risky assets, including foreign assets, is one reason Hansa Urbana and the Caja de Ahorros del Mediterráneo suffered such grave losses in 2010 and 2011. Any potential investors in Hansa Urbana, or directly into Cabo Cortés, should be aware of the variety of environmental, market, political, legal, and reputational risks particular to Cabo Cortés, and view them with real concern, as they could seriously threaten the receipt of any return on this investment.

Fortunately, there are better options for Cabo Pulmo. Local communities are eager to work with interested partners to ensure the long-term sustainable development of the East Cape region. They seek to set the region on a path that will foster local economic growth, while still preserving for the future the area's coast, coral reef, and marine life.

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