

**CALENDAR ITEM
C86**

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03/25/08
PRC 8253.2
S. Mulqueen

**CONSIDER APPROVAL OF ASSIGNMENT
OF WEBBER PLYLEY'S 100 PERCENT INTEREST IN
MINERAL EXTRACTION LEASE NO. PRC 8253.2 TO
VULCAN LANDS, INC. AND AMENDMENT TO
LEASE NO. PRC 8253.2,
SAN BERNARDINO COUNTY**

ASSIGNOR:

Webber Plyley, Inc. (dba: Sigma Stone Company)
Attn: Mr. George Webber
101 E. Redlands Blvd., Suite 240
Redlands, CA 92373

ASSIGNEE:

Vulcan Lands, Inc.
Attn.: Mr. Brian Ferris
3200 San Fernando Road
Los Angeles, CA 90065

AREA, LAND TYPE, AND LOCATION:

Approximately 160 acres of State 100 percent reserved mineral interest patented school land (APN: 0419-051-20-0000) located in portions of Section 36, T8N, R3W, SBM, San Bernardino County and situated about 10 miles southwest of Barstow (see Exhibit A).

BACKGROUND:

On November 27, 2000, the California State Lands Commission (Commission) authorized the issuance of Mineral Extraction Lease No. PRC 8253.2 to Webber Plyley Inc., dba: Sigma Stone Company (Sigma) for operation of the Black Angel Aggregate Mine (Ca Mine ID No. 91-36-0128). The lease is for a primary term of 10 years with a starting date of December 1, 2000, and provides for two ten-year rights of renewal. As authorized under the lease, Sigma may mine rock, sand, and gravel, commonly called aggregate. Currently, Sigma crushes and screens

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this rock for aggregate that it sells for road construction and other construction purposes in the rapidly growing high desert communities of Victorville and Barstow.

The lease provides for a royalty of not less than seven percent (7%) of the gross proceeds of sale or a minimum royalty per ton, whichever is greater. The minimum royalty, starting in December 2000, was \$0.30 per short ton and has escalated \$0.01 per lease year to the present royalty of \$0.37 per short ton. Sigma has successfully developed the quarry to a current production of approximately 200,000 short tons per year with resulting royalties to the State of over \$100,000 per year for the benefit of the State Teachers Retirement System.

On October 1, 2007, Mr. George Webber of Webber Plyley, Inc., dba: Sigma Stone Company submitted a request to assign all of its interest in Lease No. PRC 8253.2 to Vulcan Lands, Inc. (Vulcan). Paragraph 24 of the lease provides that the lessee, with Commission approval, may assign any portion of the lease to any entity possessing the qualifications described in Public Resources Code section 6804. Vulcan Lands, Inc., is a wholly owned subsidiary of Vulcan Materials Company (VMC), the largest aggregate producer in the nation with 287 aggregate production facilities nationwide. VMC is a publicly traded company headquartered in Birmingham, Alabama and listed on the New York Stock Exchange. VMC employs approximately 8,000 employees. Its sales of construction materials for 2006 exceeded \$3 billion dollars. Vulcan Lands, Inc., a wholly owned subsidiary of VMC, holds the properties, leases and other agreements upon which Vulcan Materials operates its aggregate production facilities.

Vulcan operates numerous aggregate facilities in California located in Sacramento, Fresno, Pleasanton, Riverside, San Bernardino, San Diego, Corona and Oro Grande. The Oro Grande facility near Victorville is primarily an asphalt plant for which Vulcan currently purchases its aggregate from outside sources. With the acquisition of the Black Angel Mine, Vulcan will become self sufficient in its aggregate needs for this asphalt plant and will have opportunities for outside sales for the growing desert communities and other infrastructure needs.

On May 10, 2007, Sigma received approval from San Bernardino County Planning Department for a new Mining Conditional Use Permit and Reclamation Plan 2007M-03 CUP/RP that replaces all prior approvals. The new CUP/RP allows aggregate production to increase from a current maximum of 1 million tons per year to 2 million tons per year. In addition, the acreage is increased to

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140 acres from the current 60 and extends the mine life to 2037. Mitigated Negative Declaration SCH #2007021063 was prepared for this project pursuant to the provisions of CEQA, together with a comprehensive Mitigation Monitoring and Compliance Program.

Staff is recommending an increase in the current financial security of \$15,000 based upon the increased aggregate production levels. Vulcan has agreed to a new financial security in the amount of \$100,000.

On December 3, 2007, the Commission approved Calendar item 33 authorizing the assignment and amendment of this lease contingent upon the subsequent closing of escrow by the two parties by March 1, 2008, or the Commission action would be automatically rescinded. Sigma and Vulcan **did not** close escrow by March 1, 2008. On March 6, 2008, representatives of Sigma and Vulcan met with Commission staff and explained why they could not consummate the lease assignment. Vulcan has been ordered by a court to divest itself by April 15, 2008, of certain mineral properties in other states. Therefore, Vulcan is acquiring the Black Angel Mine under section 1031 Internal Revenue Act exchange of mineral property for commercial property. A 1031 exchange of mineral property requires a minimum 30-year lease term. Vulcan and Sigma were precluded from closing on March 1, because the proposed lease amendment effective January 1, 2008, provided only 29 years and 10 months. This will be remedied in the new lease amendment by providing for a maximum lease term of 30 years and 8 months. Sigma is acquiring a one-year extension of the CUP/RP; so that the Commission's mineral lease term will coincide with the term of the CUP/RP.

Based on information from Vulcan's escrow and title companies, the only item precluding completion of the transaction is the new lease term that will be provided by this Commission action. The two parties have asked that the Commission approval be contingent upon close of escrow by May 15, 2008, although they anticipate close of escrow sooner. Consequently, the lease assignment and amendment documents have been revised appropriately and have been duly executed.

This lease amendment also provides for other reasonable modifications including:

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1. Establishment of a new primary term of the lease ending November 30, 2018. This new primary term, together with the two ten-year rights of renewal, provides a lease term that coincides with the County's CUP/RP.
2. Increase of the minimum royalty to \$0.50 per short ton with an escalation of \$0.02 per lease year.
3. Increase the minimum annual tonnage of aggregate to 100,000 short tons.
4. Incorporation of the new Mitigated Negative Declaration SCH #2007021063.
5. Incorporation of the new Mining Conditional Use Permit/Reclamation Plan 2007M-03 and Mitigation Monitoring and Compliance Program.

STATUTORY AND OTHER REFERENCES:

- A. Paragraph 20 of the Lease.
- B. Paragraph 24 of the Lease.
- C. Public Resources Code section 6804

OTHER PERTINENT INFORMATION

1. **Lease Assignment:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

2. **Expansion of Facilities and Amendment of Lease:** A Mitigated Negative Declaration was prepared and adopted for this project by the County of San Bernardino. The California State Lands Commission's staff has reviewed such document. A Mitigation Monitoring Program was adopted by the County of San Bernardino.

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3. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. However, the Commission has declared that all State School Lands and submerged lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code sections 6370, et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by Title 2, California Code of Regulations, section 2954 is not applicable.
4. Properly executed Assignment and Lease Amendment forms have been received. Webber Plyley, Inc., has submitted an additional \$5,000, which was added to the Reimbursement Agreement to complete the lease assignment and amendment.
5. Commission staff performed a lease inspection of the Black Angel Mine on November 20, 2007, and found the mine properly maintained and in good order.

EXHIBIT:

- A. Location Map

PERMIT STREAMLINING ACT DEADLINE:

N/A (not a “development project” subject to the Act).

RECOMMENDED ACTIONS:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

1. **LEASE ASSIGNMENT:** FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.
2. **EXPANSION OF FACILITIES AND AMENDMENT OF LEASE:** FIND THAT A MITIGATED NEGATIVE DECLARATION AND A

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MITIGATION MONITORING PROGRAM WERE PREPARED AND ADOPTED FOR THIS PROJECT BY THE COUNTY OF SAN BERNARDINO AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

3. ADOPT THE MITIGATION MONITORING PROGRAM, AS CONTAINED IN THE CEQA DOCUMENT, ON FILE IN THE LONG BEACH OFFICE OF THE COMMISSION.

AUTHORIZATION:

1. CONSENT TO THE ASSIGNMENT OF 100 PERCENT INTEREST IN MINERAL EXTRACTION LEASE NO. PRC 8253.2 FROM WEBBER PLYLEY, INC. TO VULCAN LANDS, INC., WITH THE ASSIGNEE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THE LEASE, INCLUDING THE CURRENT LEASE AMENDMENT.
2. AUTHORIZE THE AMENDMENT OF MINERAL EXTRACTION LEASE NO. PRC 8253.2 CONSISTENT WITH THE TERMS OUTLINED ABOVE.
3. THE ASSIGNMENT IS CONDITIONED ON THE CLOSING OF ESCROW BY MAY 15, 2008, AS SET FORTH IN THE PURCHASE AND SALE AGREEMENT BETWEEN WEBBER PLYLEY, INC. AND VULCAN MATERIALS, INC. IF ESCROW DOES NOT CLOSE BY MAY 15, 2008, THIS APPROVAL SHALL BE RESCINDED WITHOUT ANY FURTHER ACTION BY THE COMMISSION.
4. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE ANY DOCUMENTS NECESSARY TO IMPLEMENT THE COMMISSION'S ACTION.

