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December 5, 2005

Ms. Rini Ghosh
Section of Environmental Analysis
Surface Transportation Board
ATTN: STB Finance Docket No. 34284
1925 K Street, NW
Washington, DC 20423-0001

VIA EMAIL
& Regular Mail

RE: STB Finance Docket No. 34284 -- Adequate analysis under NEPA for:

- (1) Vulcan Materials Company's planned Medina County stone quarry; and
- (2) Vulcan Materials Company subsidiary Southwest Gulf Railroad Company's proposed rail line to serve Medina County stone quarry.

Dear Ms. Ghosh:

MCEAA has reviewed the recent submission, EI-1769, by the applicant, Vulcan/SGR ("Vulcan"), dated November 22, 2005. That letter from Vulcan essentially purports to respond to a previous October 5, 2005 submission by MCEAA, EI-1698, and perhaps other recent submissions.

There are really only three points to be made in response to EI-1769, most of which we have already made in previous letters:

1. The semantics of whether the 1:1 cut ratio in the TRAX report should have been 0.5:1 ignores the fact that MCEAA is right about the bottom line of Vulcan's September 7, 2005 changes to the ratio: Wider benches result in higher cut and fill volume. There has been no basis shown for why the wider benches are suddenly required—only an

allegation that they are more “conservative.” How can they be more “conservative” if narrower benches were feasible before?

2. In contrast to its haste to change the cut ratio used on its original alignments, Vulcan insists on preserving its original ruling grade of 1.0%. Unfortunately, this 1.0% limit presents the opposite situation from the cut ratio. Where the original cut ratio was a “floor” that was deemed sufficient, the ruling grade is an “upper limit” that has never been justified. Indeed, MCEAA has submitted evidence from past and present agency construction proceedings involving heavy haul freight, including loaded coal trains, to show that 1.0% is by no means an “upper limit.”

Vulcan is trying to whipsaw the agency and any reviewing body by trying to turn a “floor” (the cut ratio) into an “upper limit” while utilizing its alleged “upper limit” (the ruling grade) that is really a “floor.” The agency, with its expertise, should know the difference and make findings accordingly when it defines a common set of physical feasibility criteria for the alternative routes.

3. Finally, Vulcan again challenges the need to evaluate cumulative flood and groundwater impacts, among others, from the quarry and rail line in accordance with governing law. This is despite the fact that the agency has designated Vulcan's quarry, in the record, as a related action within the meaning of the cumulative impact regulation, 40 C.F.R. 1508.7. The agency has also recognized that quarry impacts will be at least cumulative with those of the rail line.

Vulcan's argument is simple and baseless: “Since this modeling and consultation is alignment-specific, this is work that can be undertaken only once a final alignment is chosen.” This has never been the law, and with good reason. Anyone can see that this irrational position renders the alternatives analysis under NEPA a sham. Indeed, it should be clear to the agency that since NEPA is a procedural, rather than substantive statute, that bare promises to mitigate significant impacts along one pre-chosen route are no replacement for their analysis and disclosure in the EIS.

Vulcan's reliance on future, post-licensing actions creates many serious legal and factual problems in the administrative record for the agency. In our mind, these problems are unnecessary and unjustifiable in light of governing law on cumulative impacts and the alternatives analysis, and the agency should abandon any support for Vulcan's meritless position—support for which has never been disclosed to date, probably because it does not exist—on these issues.

Very truly yours,
THE GARDNER LAW FIRM
A Professional Corporation
/s/

David F. Barton

cc:
U.S. Congressman Henry Bonilla
Senator John Cornyn
Senator Kay Bailey Hutchison
Texas Agriculture Commissioner Susan Combs
Texas Senator Frank Madla
Texas Representative Tracy King
County Judge James Barden
County Commissioner, Pct. 1, Chris Mitchell
County Floodplain Administrator Pat Brawner
Texas Historical Commission Executive Director Larry Oaks