

**Before the**  
**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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**LEGACY VULCAN, LLC**

*Claimant*

v.

**UNITED MEXICAN STATES**

*Respondent*

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**REQUEST FOR ARBITRATION**

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3 December 2018

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## REQUEST FOR ARBITRATION

Claimant Legacy Vulcan, LLC ("Legacy Vulcan"), on its own behalf and on behalf of its Mexican enterprise Calizas Industriales del Carmen, S.A. de C.V. ("Calica"), hereby submits to arbitration administered by the International Centre for Settlement of Investment Disputes ("ICSID") the following dispute with the United Mexican States (the "Respondent" or "Mexico").

### I. SUMMARY OF THE DISPUTE

1. This dispute concerns Mexico's failure to comply with its international obligations under the North American Free Trade Agreement ("NAFTA").<sup>1</sup>

2. In the mid-1980s, attracted by new policies designed by Mexico to increase foreign investment in the mineral extractive sector, Legacy Vulcan invested, along with Mexican conglomerate Grupo ICA, in a major joint-venture project to extract limestone for export to the United States (the "Project").

3. The Project, which is located near Playa del Carmen in the State of Quintana Roo, included, *inter alia*, the construction of a deep-sea port to export the production and other substantial infrastructure to conduct quarrying operations in a lot that Claimant acquired for that purpose.

4. In 1986, Calica, the main operating unit of the joint venture; Mexico, through the Federal Government; and the State of Quintana Roo entered into an investment agreement whereby the state authorities authorized the Project from an environmental standpoint, committed to facilitate the required permits, and recognized Calica's right to exploit the reserves of limestone in its lots for as long as it was economically feasible.

5. By 1991, Calica had built the Project and successfully exported the Project's first shipment of limestone to the United States.

6. In 1996, in accordance with the investment agreement, the Project was expanded to include two additional lots of land. The state and the federal environmental authorizations to conduct quarrying operations in those lots were issued in 1996 and 2000, respectively.

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<sup>1</sup> North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 289 (1993).

7. The Project has been a success for its investors, Mexico, the State of Quintana Roo, and the vicinity of Playa del Carmen. It has created hundreds of direct jobs for the region, provided a new source of tax revenues to the State and relevant municipalities, and developed much needed infrastructure in an area that was largely underdeveloped when Claimant undertook the risk of investing in the Project.

8. After Grupo ICA sold its share in the joint venture to Legacy Vulcan, Legacy Vulcan and Calica became the target of numerous adverse measures by federal, state, and municipal authorities that compromised, *inter alia*, their ability to operate the port and conduct quarrying operations in La Adelita, one of the lots acquired in 1996. These adverse measures led to litigation in Mexico between Calica and several instrumentalities of Mexico and eventually resulted in two comprehensive settlement agreements that Calica and Mexico and its relevant instrumentalities entered into in 2014 to resolve all their disputes.

9. Calica in good faith gave up valuable rights when it entered into those agreements, with the expectation that Mexico and its instrumentalities would live up to their part of the bargain. But Mexico has failed to do so. It has repudiated one of the critical obligations in the settlement agreements, and in the last several months has adopted further adverse measures, which collectively have triggered the dispute that Claimant is forced to submit to arbitration after its attempts to resolve the dispute amicably have failed.

10. This Request for Arbitration is structured as follows:

- Section II identifies the Parties.
- Section III identifies the jurisdictional bases under NAFTA and the ICSID Convention pursuant to which Claimant brings this arbitration.
- Section IV describes the factual background to the dispute.
- Section V identifies Respondent's breaches of NAFTA.
- Section VI contains NAFTA's provisions relating to the constitution of the Tribunal and the seat of the proceeding.
- Section VII sets out the relief sought by the Claimant.

## II. PARTIES TO THE DISPUTE

11. Claimant Legacy Vulcan is a limited liability company organized and existing under the laws of Delaware, United States of America (“United States”). Legacy Vulcan’s address is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, United States.<sup>2</sup>

12. Legacy Vulcan is submitting investment claims to arbitration on its own behalf and on behalf its enterprise Calica pursuant to NAFTA Articles 1116(1) and 1117(1), respectively.

13. In accordance with Rule 2(1)(f) of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings, Claimant Legacy Vulcan and Calica have taken all necessary internal actions to authorize the submission of this Request for Arbitration.<sup>3</sup>

14. The authorized representatives for the Claimant and Calica are Miguel López Forastier, José E. Arvelo, Mary T. Hernandez, Clovis Trevino, and Santiago M. Zalazar of COVINGTON & BURLING LLP; and Carlos Eduardo Martínez Betanzos, Luis M. Jardón Piña, Carlos de Icaza Aneiros, and [REDACTED] of CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ, S.C.<sup>4</sup> All correspondence related to this arbitration proceeding should be addressed to:

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<sup>2</sup> See Copy of Certification of Formation of Legacy Vulcan, LLC (C-1).

<sup>3</sup> See Corporate Resolution and Power of Attorney — Legacy Vulcan, LLC (C-2) and Shareholders’ Ordinary Resolution and Power of Attorney — Calizas Industriales del Carmen, S.A. de C.V. (C-3).

<sup>4</sup> *Id.*

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15. The Respondent is the United Mexican States. Respondent has requested that, pursuant to Article 34, Subsections VII and IX of the Internal Regulations of the Mexican Ministry of Economy, this Request for Arbitration be served on the Respondent in the person of Ms. Samantha Atayde Arellano at the following address:<sup>5</sup>

Estados Unidos Mexicanos  
Dirección General de Consultoría Jurídica de Comercio Internacional  
Secretaría de Economía  
Pachuca 189, Piso 19  
Colonia Condesa  
Delegación Cuauhtémoc  
C.P. 06140  
Ciudad de México  
México

### III. JURISDICTION

16. ICSID has jurisdiction over this investment dispute pursuant to Chapter 11, Section B of NAFTA and Article 25 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”).<sup>6</sup>

#### A. THE JURISDICTIONAL REQUIREMENTS UNDER NAFTA ARE MET

17. As explained below, all jurisdictional requirements of NAFTA are met. Claimant has also complied with the procedural requirements of NAFTA for submission of an investment dispute to arbitration.

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<sup>5</sup> Letter from Samantha Atayde Arellano to Miguel López Forastier and Carlos Eduardo Martinez Betanzos, dated 24 September 2018 (C-4). Legacy Vulcan will deliver a courtesy copy of this Request for Arbitration to Respondent.

<sup>6</sup> Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Oct. 14, 1966, 575 U.N.T.S. 159.

18. Claimant is an “investor of a Party” authorized to submit a claim to arbitration under NAFTA Articles 1116(1) and 1117(1). NAFTA Article 1139 defines “investor of a Party” as “a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making, or has made an investment.” NAFTA Article 1139 further defines “enterprise of a Party” to include “an enterprise constituted or organized under the law of a Party [...]” Claimant is an enterprise of the United States because it is a limited liability company organized and existing under the laws of the State of Delaware, United States of America.<sup>7</sup>

19. Claimant has made several investments in Mexico. Claimant directly and indirectly owns assets that qualify as investments in the territory of Mexico under NAFTA Article 1139.<sup>8</sup> Claimant’s investments include, *inter alia*, (i) enterprises; (ii) interests in enterprises that entitle Claimant to share in income or profits of those enterprises; (iii) real estate or other property that Claimant acquired with the expectation, or used for the purposes, of economic benefit or other business purposes; (iv) interests arising from the commitment of capital or other resources in Mexico; and (v) concessions.

20. Calica is an entity constituted and organized under Mexican law that is indirectly owned and controlled by Legacy Vulcan.<sup>9</sup> Accordingly, under NAFTA Articles 201 and 1139, Calica is both an enterprise and an investment of Legacy Vulcan.

21. NAFTA Articles 1116(1) and 1117(1) establish that an investor of a Party may submit an investment claim to arbitration if another Party has breached an obligation under, *inter alia*, Chapter Eleven, Section A of NAFTA, and the investor, or the enterprise on whose behalf the investor is submitting the claim, “has incurred loss or damage by reason of, or arising out of, that breach.” As explained in detail in Section V below, Claimant’s investment claims concern numerous breaches of Respondent’s obligations under Chapter Eleven, Section A of NAFTA, and Claimant, and Claimant’s Mexican enterprises, including Calica, have incurred loss or damage as a result of those breaches.

22. Claimant’s submission of its investment claims to arbitration is timely under NAFTA Articles 1116(2), 1117(2), 1119, and 1120(1). NAFTA Articles 1116(2) and 1117(2) establish

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<sup>7</sup> See Copy of Certification of Formation of Legacy Vulcan, LLC (C-1).

<sup>8</sup> Certification of Ownership Structure of Calizas Industriales del Carmen, S.A. de C.V. and Related Mexican Subsidiaries (C-5).

<sup>9</sup> *Id.*; see also Copy of Articles of Incorporation of Calizas Industriales del Carmen, S.A. de C.V. (C-6).

that an investor “may not make a claim” if more than three years have elapsed from the date on which the investor, or the enterprise on whose behalf the investor is submitting the investment claim, acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor, or its enterprise, has incurred loss or damage. Claimant’s investment claims are timely under NAFTA Articles 1116(2) and 1117(2) because no more than three years have elapsed since Claimant, or Claimant’s Mexican enterprises, including Calica, first acquired knowledge of Respondent’s breaches and of Claimant’s and Calica’s losses.

23. Pursuant to NAFTA Article 1119, an investor “shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted” to arbitration. Claimant delivered its Notice of Intent to Submit a Claim to Arbitration under NAFTA Chapter 11 (“Notice of Intent”) on 3 September 2018, which is more than 90 days prior to the date of this Request for Arbitration.<sup>10</sup> Additionally, under NAFTA Article 1120(1), an investor may submit an investment claim to arbitration only if “six months have elapsed since the events giving rise to [the] claim.” As explained in Section IV.F below, more than six months have elapsed since the events giving rise to Claimant’s claims occurred.

24. Claimant has also complied with the conditions precedent for the submission of the present investment claim to arbitration under NAFTA. Pursuant to Article 1121(1) and (2) of NAFTA, Claimant and Calica have consented in writing to submit this dispute to arbitration in accordance with the procedures set out in NAFTA. Claimant and Calica have expressed their consent in their Notice of Intent, their consent and waiver letter dated 3 December 2018 (the “Consent/Waiver Letter”), and they ratify their consent hereby.<sup>11</sup> Respondent expressed its consent to arbitration in NAFTA Article 1122(1).<sup>12</sup> Pursuant to NAFTA Article 1121(1) and (2), Legacy Vulcan and Calica waive their right to initiate or continue before any administrative tribunal or court any proceedings with respect to the measures alleged to be in breach of NAFTA,

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<sup>10</sup> Notice of Intent to Submit a Claim to Arbitration under NAFTA Chapter 11 (C-7).

<sup>11</sup> *Id.* Legacy Vulcan and Calica expressed their consent on 3 September 2018 in the Notice of Intent. See also Legacy Vulcan, LLC’s and Calizas Industriales del Carmen, S.A. de C.V.’s executed instrument of consent and waiver pursuant to NAFTA Article 1121, dated 3 December 2018 (hereinafter, the Consent/Waiver Letter) (C-8).

<sup>12</sup> Decree enacting NAFTA, including NAFTA text (Official Gazette of the Federation, 20 December 1993, Second Edition) (C-9).

except for proceedings seeking injunctive, declaratory, or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of Mexico.<sup>13</sup>

25. Finally, as required by NAFTA Article 1118, Claimant has sought to settle this dispute with Respondent through consultations. Notwithstanding Claimant's good faith efforts to resolve the dispute amicably, Claimant and Calica have been unable to do so and are now forced to submit this Request for Arbitration.

**B. THE JURISDICTIONAL REQUIREMENTS UNDER THE ICSID CONVENTION ARE MET**

26. ICSID has jurisdiction over Claimant's investment claims under NAFTA. Pursuant to NAFTA Article 1120(1)(a), a disputing investor may submit an investment claim to ICSID arbitration "provided that both the disputing Party and the Party of the investor are parties to the ICSID Convention." The United States and Mexico are parties to the ICSID Convention. The United States became a Contracting State to the ICSID Convention on 14 October 1966, and Mexico became a Contracting State to the ICSID Convention on 26 August 2018. Accordingly, Claimant may properly submit its investment claims to arbitration under the ICSID Convention.

27. The jurisdictional requirements under the ICSID Convention are met. Under Article 25(1) of the ICSID Convention, ICSID has jurisdiction over "any legal dispute arising directly out of an investment, between a Contracting State [...] and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre." The present legal dispute arises directly out of Claimant's and Calica's investments in Mexico, as explained in Sections IV.A and F below. Furthermore, the dispute involves a "Contracting State" and "a national of another Contracting State." Mexico and the United States are both Contracting States to the ICSID Convention. Claimant is a "juridical person which had the nationality of [the United States] [...] on the date on which the parties consented to submit such dispute to conciliation or arbitration," in accordance with Article 25(2)(b) of the ICSID Convention.<sup>14</sup>

28. Finally, the Parties have consented in writing to submit this investment dispute to ICSID arbitration. Respondent has expressed its consent in writing to submit investment disputes to ICSID arbitration in NAFTA Article 1122(1). Claimant and Calica did so in their Notice of Intent

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<sup>13</sup> Consent/Waiver Letter (C-8).

<sup>14</sup> See Copy of Certification of Formation of Legacy Vulcan, LLC (C-1).

and in their Consent/Waiver Letter, and they hereby restate and ratify their consent to submit this dispute for resolution to ICSID.

#### **IV. FACTUAL BACKGROUND OF THE DISPUTE**

29. The following statement is a general and abbreviated description of the relevant facts. It is submitted for the limited purpose of providing information concerning the issues in dispute to show that there is, between the Parties, a legal dispute arising directly out of an investment as required by ICSID Institution Rule 2(1)(e). The Claimant will present a full statement of the dispute, including the facts, the law, and supporting evidence, at the appropriate stage of this proceeding.

30. The investment dispute submitted to arbitration herein arises directly out of Mexico's actions and omissions, which are in breach of Mexico's obligations under NAFTA and have caused Claimant, and its investments, including Calica, to suffer damages as a consequence thereof.

##### **A. THE CLAIMANT AND ITS INVESTMENTS IN MEXICO**

31. Legacy Vulcan is a subsidiary of Vulcan Materials Company, the largest producer of construction aggregates — primarily crushed stone, sand, and gravel — and a major producer of aggregates-based construction materials, including asphalt and ready-mixed concrete, in the United States.

32. In the early 1980s, faced with a severe economic crisis, Mexico began a process of opening its economy to foreign trade and investment. One of Mexico's main objectives was the creation of a robust non-oil export sector to increase the inflow of foreign currency and to create new jobs. Among other initiatives, Mexico encouraged foreign investment in the extractive sector, as reflected in the 1983-1988 National Development Plan (*Plan Nacional de Desarrollo 1983-1988*) issued by Mexican President Miguel de la Madrid in 1983, and the 1984-1988 National Program for Industrial Development and Foreign Trade issued in 1984 (*Programa Nacional de Fomento Industrial y Comercio Exterior 1984-1988*). Furthermore, the 1984-1988 National Mining Program (*Programa Nacional de Minería 1984-1988*) specifically encouraged the construction of terminals and specialized transportation to strengthen Mexico's mining competitiveness. It also acknowledged that it was "frequently necessary to recur to foreign firms" for large projects.

33. Attracted and encouraged by these new policies, in the mid-1980s, Legacy Vulcan began exploring areas in Mexico for the extraction and export of limestone to the United States. After investing substantial resources in surveys and assessments, Legacy Vulcan determined that the State of Quintana Roo presented suitable conditions for the project given its geology and proximity to the Caribbean Sea.

34. In 1986, Legacy Vulcan and Grupo ICA, a Mexican conglomerate, entered into a joint-venture agreement to (i) establish a limestone quarry and extraction plant in Quintana Roo (the “Extraction Plant”); (ii) construct port terminals adjacent to the Extraction Plant (the “Port Terminal”); and (iii) deploy a fleet of vessels to export the limestone to the United States. To construct the Extraction Plant and the Port Terminal, and to operate the Project, the joint venture partners incorporated Calica in Mexico.

35. On 6 August 1986, Calica; Mexico, through the Federal Government; and the State of Quintana Roo entered into an agreement whereby the Federal Government and the State of Quintana Roo (i) authorized the Project from an environmental standpoint;<sup>15</sup> (ii) committed to facilitate the permits required to develop the Project;<sup>16</sup> and (iii) acknowledged Calica’s right to exploit the reserves of limestone for as long as it was economically feasible (the “Investment Agreement”).<sup>17</sup> Calica, on its part, undertook to cover all the costs and expenses of the Project.<sup>18</sup>

36. The Investment Agreement initially called for the development of the Project in two plots of land located in the Municipality of Cozumel: La Rosita and Punta Venado. Pursuant to the Investment Agreement, the Project involved (i) the extraction of limestone and aggregate materials above and below the water table in La Rosita and the transportation of those materials to a crushing plant to be constructed and operated in that lot; and (ii) the construction and operation of the Port Terminal at Punta Venado to export the Project’s production to the United

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<sup>15</sup> Agreement entered into between the Federal Government, the Government of the State of Quintana Roo, and Calica, dated 6 August 1986, First Clause (hereinafter, the Investment Agreement) (C-10).

<sup>16</sup> *Id.*, p. 7, Tenth Clause.

<sup>17</sup> *Id.*, p. 2, numeral II.

<sup>18</sup> *Id.*, p. 5, First Clause.

States.<sup>19</sup> The Port Terminal includes both a public terminal, which is used by ferries and passenger ships, and a private terminal, which is used by Calica to conduct its operations.

37. The Investment Agreement acknowledged that the Project was environmentally viable and that it would benefit the development of the region and generate favorable foreign-currency inflows for Mexico, which was in line with the objectives set forth in the 1983-1988 National Development Plan.<sup>20</sup> The Investment Agreement also contemplated “modifications to the characteristics” of the Project, including its area and scope.<sup>21</sup>

38. In December 1986 and May 1987, Rancho Piedra Caliza, S.A. de C.V. (“Rancho Piedra Caliza”), a Mexican subsidiary of Calica, acquired the plots of land in Punta Venado and La Rosita, respectively, and leased those lots to Calica, immediately thereafter, to develop the Project.

39. On 6 July 1987, the President of Mexico Miguel de la Madrid further endorsed the Project when the joint venture partners committed to invest US\$150 million for its development, which was expected to create 1,800 new jobs during its construction phase and 200 permanent jobs thereafter.<sup>22</sup>

40. By 1991, Calica’s Extraction Plant was operational, and Calica had exported its first limestone shipment to the United States.

41. In accordance with the Investment Agreement, which contemplated the potential expansion of the Project, in 1996, Rancho Piedra Caliza acquired two additional plots of land in the State of Quintana Roo — El Corchalito and La Adelita — for the sole purpose of expanding Calica’s operations. Soon after the purchase, Rancho Piedra Caliza leased El Corchalito and La Adelita to Calica so that Calica could obtain the necessary permits and authorizations to conduct quarrying operations on those lots.

42. Shortly thereafter, in December 1996, the State of Quintana Roo issued the required environmental authorization for the expansion of the Project to El Corchalito and La Adelita. The Secretariat of Environment and Natural Resources (*Secretaría de Medio Ambiente*

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<sup>19</sup> *Id.*, p. 3, numeral IV, Annex 1, pp. 11-27.

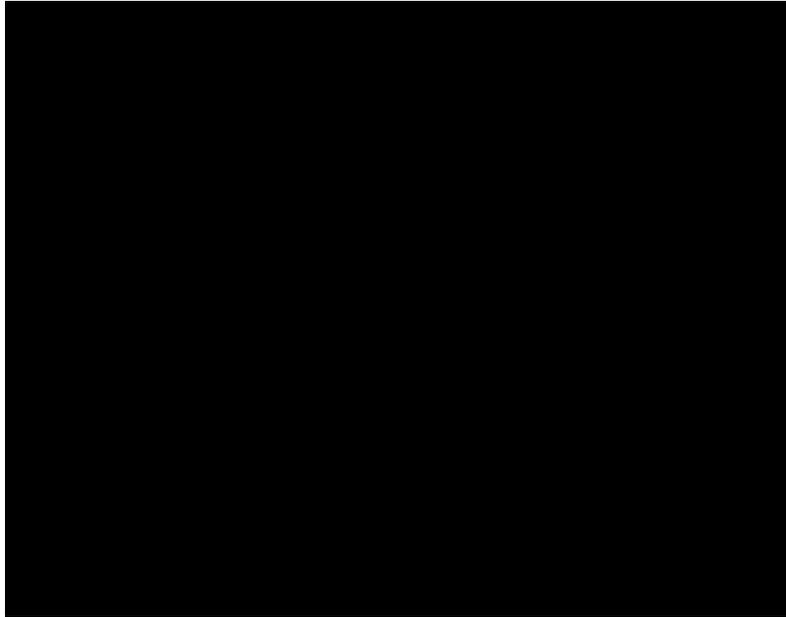
<sup>20</sup> *Id.*, p. 4, numeral VII.

<sup>21</sup> *Id.*, p. 6, Fifth Clause.

<sup>22</sup> Agreement entered into between Grupo ICA and Vulcan Materials Company, witnessed by Miguel de la Madrid Hurtado, President of the United Mexican States, dated 6 July 1987, pp. 1-2 (C-11).

y Recursos Naturales) (“SEMARNAT”), the federal environmental agency, did the same in November 2000.

### **Aerial View of the Project**



**Aerial View of the Port Terminal in Punta Venado**



### **B. THE PROJECT’S REGULATORY FRAMEWORK**

43. When Legacy Vulcan first established its investments in Mexico, the Project was governed mainly by the Investment Agreement and federal law and, to a much lesser extent, local ordinances of the State of Quintana Roo. As the investment and the Project expanded and the

territorial demarcations of the relevant municipalities changed, so did some of the regulations applicable to the Project.

### **1. The Port Terminal**

44. Calica's operations at the Port Terminal are regulated by the Investment Agreement and Mexican federal law. On 21 April 1987, the Secretariat of Communications and Transportation of Mexico (*Secretaría de Comunicaciones y Transportes*) (the "SCT") granted Calica a concession to operate its Port Terminal (the "Calica Port Concession") for a term of 20 years.<sup>23</sup>

45. In 1993, the federal government enacted the Ports Act (*Ley de Puertos*), which requires that all port concessions be held by state-owned entities known as Integral Port Administrations (*Administraciones Portuarias Integrales*). The State of Quintana Roo and its municipalities created the Integral Port Administration of Quintana Roo ("API Quintana Roo") in 1994. That same year, the SCT granted the API Quintana Roo a concession to operate all port facilities in the State of Quintana Roo (the "API Quintana Roo Concession"), except for Calica's Port Terminal, which was grandfathered and remained under the Calica Port Concession.

46. The SCT has amended the Calica Port Concession four times. Three of those amendments were made between 1993 and 1994 to grant Calica the right to operate its own private terminal to conduct its operations, and to build and operate a public terminal for ferries, cruises, and passenger ships.<sup>24</sup> In 2015, the SCT again amended the Calica Port Concession to exclude the public terminal from the concession and to extend the private terminal's concession term to 2037.<sup>25</sup>

47. Calica also has a concession to use the so-called federal maritime-terrestrial zone (*zona federal marítimo-terrestre*) ("ZOFEMAT"), an area adjacent to the Port Terminal of approximately 50 meters from the low tide point to the shore that Calica uses to conduct its operations (the "ZOFEMAT Concession"). SEMARNAT issued the ZOFEMAT Concession in

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<sup>23</sup> Concession granted by the Executive Branch through the SCT to Calica, dated 21 April 1987, p. 2 (C-12).

<sup>24</sup> Amendment to the Concession granted by the Federal Government through the SCT to Calica, dated 13 August 1993 (C-13); Amendment to the Concession granted by the Federal Government through the SCT to Calica, dated 7 June 1994 (C-14); Amendment to the Concession granted by the Federal Government through the SCT to Calica, dated 30 September 1994 (C-15).

<sup>25</sup> Amendment to the Concession granted by the Federal Government through the SCT to Calica, dated 13 May 2015 (C-16).

March 1992 for a period of 10 years. The ZOFEMAT Concession was extended in 2016, and is currently set to expire in 2025. Rancho Piedra Caliza also has a conservation and ornament concession over the federal maritime-terrestrial zone, which is used to demarcate the boundaries of the Port Terminal. Rancho Piedra Caliza's concession will expire in 2023.

## **2. Environmental Laws**

48. Environmental matters are regulated at the municipal, state and federal levels in Mexico. When the Investment Agreement was executed, the State of Quintana Roo had not adopted any relevant environmental regulations. Accordingly, the parties to the Investment Agreement agreed that operations in Punta Venado and La Rosita were to be subject to the terms of a federal Environmental Impact Authorization that had been issued in 1986 and is valid for the life of the Project.<sup>26</sup>

49. In contrast, activities in El Corchalito and La Adelita are subject to municipal, state and federal environmental regulations because, when those lots were acquired in 1996, the State of Quintana Roo had already adopted relevant environmental regulations. Consequently, extraction activities below the water table in those lots are regulated by federal law, whereas extraction activities at the ground level in those lots are mainly regulated by state and municipal law.

50. In 2000, the SEMARNAT issued to Calica a federal Environmental Impact Authorization to conduct extraction activities below the water table in El Corchalito and La Adelita for a period of 20 years (the "Corchalito/Adelita Federal EIA").<sup>27</sup> The current Corchalito/Adelita Federal EIA is set to expire in December 2020.

51. In December 1996, the Ministry of Infrastructure, Environment, and Fisheries of Quintana Roo issued to Calica a State Environmental Impact Authorization that authorizes Calica to engage in the extraction of limestone above the water level in El Corchalito and La Adelita on 25 hectares per year for a period of five years from the commencement of the exploitation (the "Corchalito/Adelita State EIA").<sup>28</sup> Calica commenced quarrying activities in El Corchalito on 23 August 2001, and the Corchalito/Adelita State EIA was renewed in 2006, and again in 2011, each

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<sup>26</sup> Investment Agreement, Annex 2 (C-10).

<sup>27</sup> Corchalito/Adelita Federal EIA, dated 30 November 2000, p. 13 (C-17).

<sup>28</sup> Corchalito/Adelita State EIA, dated 11 December 1996, pp. 2, 4 (C-18).

time for an additional five years. In March 2016, the State of Quintana Roo amended the Corchalito/Adelita State EIA that was in force to (i) extend the authorization's term from 5 to 20 years and (ii) increase the yearly exploitation area from 25 to 50 hectares per year.<sup>29</sup> Accordingly, the current Corchalito/Adelita State EIA is set to expire in 2036.

### **3. Zoning Laws**

52. The zoning laws that apply to the Project have changed over time. Originally, from 1986 until 2001 approximately, the zoning laws governing the Project were issued by the federal government.

53. Beginning in 2001 and until 2009, the Project was subject to the zoning laws and regulations of the State of Quintana Roo, including the State Program for Ecological Order (*Programa de Ordenamiento Ecológico Territorial*) (the "POET").

54. Finally, since 2009, different parts of the Project have been subject to the zoning laws of two municipalities. In the case of La Rosita and Punta Venado, zoning is governed by the Cozumel Municipality Program for Ecological Order (*Programa de Ordenamiento Ecológico del Municipio de Cozumel*) (the "POEC"); whereas La Adelita and El Corchalito are subject to the zoning regulations of the Municipality of Solidaridad, including (i) the Local Environmental Order Program (*Programa de Ordenamiento Ecológico Local*) (the "POEL"), which was enacted in 2009 to replace the POET, and (ii) the Urban Development Plan.

#### **C. CLAIMANT'S CONTRIBUTION TO QUINTANA ROO'S SOCIO-ECONOMIC DEVELOPMENT**

55. Claimant's Project has significantly contributed to the economic development of the State of Quintana Roo, particularly Playa del Carmen. Calica is the second largest employer in the state, generating direct employment for more than 400 people and indirect employment for over 2,500 people.

56. Among other contributions to the area, Calica has built a housing complex, a school, and sports and social facilities for its employees and the community. Calica has also donated over a million tons of aggregates for public schools, clinics, hospitals, roads, parks, and

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<sup>29</sup> Amendment to the Corchalito/Adelita State EIA, dated 29 February 2016, p. 1 (C-19).

emergency-services infrastructure. Moreover, Calica founded and sponsors a bilingual school that hosts over 530 students.

57. Calica has also played a major role in the development of infrastructure in the region by building a deep-water port with two terminals, roads and bridges, assisting with the building of the local electricity grid, and supplying the aggregates used to build Cancun's international airport and Quintana Roo's interstate highways. Notably, the Port Terminal built and operated by Calica in Punta Venado is the most important access point from Cozumel Island to mainland Quintana Roo.

58. Calica has also been an environmentally conscious operator, receiving "Clean Industry" certificates for outstanding environmental performance by the Federal Attorney's Office for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*) ("PROFEPA") every two years since 2003. Among other environmental and archeological programs, Calica (i) operates a rich nursery with more than 20,000 plants that has sustained reforestation efforts both within and outside Calica's properties (in the Municipalities of Solidaridad, Cozumel, and Tulum); (ii) protects certain natural areas, including underwater caves and *cenotes*, that serve as sanctuaries to local wildlife and plants; and (iii) extensively collaborates with the National Institute of Anthropology and History (*Instituto Nacional de Antropología e Historia*) to map out and preserve Mayan archeological sites within its properties.

#### **D. BACKGROUND MEASURES THAT LED TO THE 2014 AGREEMENTS**

59. In 2001, Grupo ICA, Legacy Vulcan's joint-venture partner, sold its interest in the joint-venture to Vulcan. Thereafter, Calica became the subject of numerous adverse measures by federal, state, and municipal authorities. As described below, Mexican authorities began adopting measures that affected (i) Calica's rights under the Calica Port Concession, (ii) Calica's ability to extract limestone from La Adelita and El Corchalito, and (iii) the taxes applicable to the Project. Calica successfully challenged most of those measures in Mexican courts and eventually entered into two agreements with Mexico and its instrumentalities in 2014 to settle those disputes (the "2014 Agreements").

##### **1. Federal and State Measures Affecting the Calica Port Concession**

60. The SCT and the API Quintana Roo adopted measures that (i) deprived Calica of the rights derived from the Calica Port Concession, (ii) forced Calica to pay port fees (the fees charged for use of the port facilities) to the API Quintana Roo, and (iii) required Calica to pay

disproportionate concession contributions (the fees charged to the concessionaire for the asset under concession) to the SCT for the Port Terminal, which includes both the public and private terminals.

61. In February 2003, at the request of the API Quintana Roo and without notifying Calica, the SCT modified the API Quintana Roo Concession to include the terminals that had been built and operated by Calica under the Calica Port Concession (“API Quintana Roo Concession Amendment”). The API Quintana Roo Concession Amendment entitled API Quintana Roo to collect fees from Calica’s and third-parties’ vessels (i) using the terminals, and (ii) sailing into the port facilities — rights that until then Calica had held under the Calica Port Concession. The amendment also required Calica to assign the terminals to the API Quintana Roo.

62. Calica challenged the API Quintana Roo Concession Amendment before the Federal Administrative and Fiscal Tribunal (*Tribunal Federal de Justicia Fiscal y Administrativa*) (“Federal Administrative Tribunal”), which, on 5 July 2006, ruled that the API Quintana Roo Concession Amendment was illegal.

63. To circumvent this ruling, in April 2007, the SCT, once again, amended the API Quintana Roo Concession. This time, by slightly changing the wording of that concession, the SCT granted the API Quintana Roo the right (i) to areas already granted to Calica under its concession, and (ii) to collect fees from Calica and third parties for use of the public and private terminals under the Calica Port Concession. Pursuant to this new amendment, the SCT and the API Quintana Roo (i) demanded that Calica pay port fees to the API Quintana Roo for Calica’s vessels sailing into Punta Venado or using the terminals, (ii) began collecting fees from third parties for the same concept, and (iii) ordered Calica not to collect those fees from third parties.

64. In 2007, Calica commenced a new legal action before the Federal Administrative Tribunal to challenge this new amendment to the API Quintana Roo Concession and the SCT’s and API Quintana Roo’s demands for payment of port fees (the “Port Fees Litigation”). To avoid further escalation, Calica paid the fees *ad cautelam* from 2007 until 2017. The Port Fees Litigation eventually reached the Mexican Supreme Court, which in 2017 ruled that the second amendment to the API Quintana Roo Concession was illegal and that the API Quintana Roo had no right to collect the port fees for Calica’s use of the Port Terminal. Nevertheless, the API Quintana Roo has refused to reimburse Calica for the port fees that it collected illegally from 2007 until 2017.

65. In addition, in 2010, while the Port Fees Litigation was ongoing, the SCT unlawfully increased Calica's concession contributions for the Calica Port Concession based on an appraisal prepared by the National Institute of Administration and Appraisals of National Assets (*Instituto Nacional de Administración y Avalúos de Bienes Nacionales*) ("INDAABIN"), that used a different methodology than the one required under the Calica Port Concession and applicable federal law. In May 2010, the SCT requested Calica to pay concession contributions in accordance with the flawed appraisal, and on 1 September 2010, Calica commenced another case before the Federal Administrative Tribunal challenging the appraisal and the SCT's attempt to collect the increased concession contributions (the "Appraisal Litigation").

66. Despite the ongoing Appraisal Litigation in which Calica eventually prevailed, on 7 May 2013, the SCT commenced an administrative proceeding to revoke the Calica Port Concession under the pretext that Calica had failed to pay the increased concession contributions required by the appraisal (the "2013 Revocation Proceeding"). In June 2013, under the threat of revocation of the Calica Port Concession, Calica was forced to pay approximately US\$15 million in inflated concession contributions demanded by the SCT. It did so under protest.

67. In 2010, and concurrently with the 2013 Revocation Proceeding, the SEMARNAT commenced, at the request of the API Quintana Roo, an administrative proceeding to cancel Calica's ZOFEMAT Concession. This proceeding remains open.

## **2. State and Municipal Measures Related to Zoning**

68. As explained in Section IV.B.3 above, the zoning laws that apply to the Project have changed since Calica began its operations in Mexico.

69. After Rancho Piedra Caliza acquired El Corchalito and La Adelita in 1996, Calica obtained the required environmental permits to conduct extraction activities in those lots. In November 2001, the State of Quintana Roo enacted the POET, which permitted quarrying activities on up to 80% of El Corchalito and La Adelita.<sup>30</sup> The POET was arbitrarily replaced in 2009, when the State of Quintana Roo and the Municipality of Solidaridad enacted the POEL. Although Calica submitted observations to the draft POEL that was under consideration of the municipal authorities, Calica never received a response from the Municipality or the State, which enacted the POEL without considering Calica's observations.

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<sup>30</sup> The remaining 20% of the plots was zoned for conservation purposes.

70. Under the POEL, which is currently in effect, La Adelita is subject to a new zoning category that prohibits quarrying activities. Despite this change, the POEL grandfathered pre-existing authorizations, including the renewal thereof, to quarry in La Adelita. Accordingly, Calica has vested rights to conduct quarrying operations in that lot, as was recognized by the High Court of Justice of Quintana Roo in 2010. But, because the federal and municipal regulatory framework does not expressly contemplate the issuance of certain ancillary permits to remove vegetation in lots with grandfathered rights, Calica has been effectively precluded from commencing extraction activities in that lot.

### **3. State and Municipal Tax Measures**

71. Since 2007, the State of Quintana Roo has collected an extraction tax that came to be known as the “Calica Tax,” as it mainly targets Calica’s activities. The Calica Tax, the collection of which is authorized by the State of Quintana Roo on an annual basis, is illegal because it taxes the extraction of limestone under the water table, a federal matter that according to the Mexican Constitution is beyond the taxation power of the State of Quintana Roo. While Calica was challenging this tax before the courts of Mexico, the State of Quintana Roo imposed upon Calica penalties related to fiscal year 2008.

72. Even though the Calica Tax purportedly applies to other companies similarly situated in Quintana Roo, the tax authority of Quintana Roo has not applied the tax equally to other companies, and no other company in the region is subject to the strict audits that are regularly imposed on Calica to monitor the assessment of this tax.

73. In 2011, the Municipality of Solidaridad increased the real estate tax applicable to La Adelita and El Corchalito by 3,000 percent and 1,000 percent, respectively. Calica commenced several actions before local courts challenging the assessed property value (cadastral value) and the Municipality’s efforts to collect the real estate tax (the “Real Estate Tax Litigations”). Calica has had mixed results in the Real Estate Tax Litigations, prevailing in some and losing in others.

#### **E. CALICA AND THE STATE PARTIES SETTLED THEIR DISPUTES IN THE 2014 AGREEMENTS**

74. In an effort to resolve all the disputes listed in the previous section between Calica, on the one hand, and the SCT, the API Quintana Roo and the State of Quintana Roo, on the other hand, on 12 June 2014, the parties entered into two related agreements: the Total Regularization

Scheme<sup>31</sup> and the binding Memorandum of Understanding (“Binding MOU”), as amended (collectively, the “2014 Agreements”).<sup>32</sup>

75. Calica entered into the 2014 Agreements in good faith and with the expectation to resolve all previous disputes with Mexico and its instrumentalities and commence a new chapter in its dealings with all parties concerned. Calica was induced to do so by Mexico and its instrumentalities, and it gave up valuable rights by entering into the 2014 Agreements.

76. Under the Total Regularization Scheme, Calica and the SCT agreed to resolve all their disputes related to Calica’s rights over the private and public port terminals. The API Quintana Roo acted as witness to the Total Regularization Scheme. Among other obligations assumed by the parties in the agreement, Calica agreed to withdraw its protest over the payment of the approximately US\$15 million in concession contributions that it had been forced to pay to the SCT in the 2013 Revocation Proceeding, and the SCT agreed to leave without effect that proceeding.<sup>33</sup> In addition, the parties agreed, *inter alia*, that Calica would transfer the public terminal and the ZOFEMAT Concession to the API Quintana Roo, and that the SCT would (i) extend the term of the Calica Port Concession until 2037, (ii) modify the API Quintana Roo Concession to reflect those changes;<sup>34</sup> and (iii) assist INDAABIN to perform an adequate appraisal of Calica’s assets to calculate its concession contributions.<sup>35</sup>

77. As part of the same transaction and closely related to the Total Regularization Scheme, the Binding MOU, in contrast, was entered into between Calica, on the one hand, and the State of Quintana Roo, the Municipality of Solidaridad, and the API Quintana Roo, on the other hand. The SCT acted as a witness to the obligations assumed by those parties in the Binding MOU.<sup>36</sup> The main purpose of the Binding MOU is to resolve the disputes relating to the “use and

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<sup>31</sup> Total Regularization Scheme entered into between the SCT and Calica, dated 12 June 2014 (hereinafter, the Total Regularization Scheme) (C-20).

<sup>32</sup> Binding Memorandum of Understanding entered into between Calica, API Quintana Roo, the State of Quintana Roo, and the Municipality of Solidaridad, dated 12 June 2014 (hereinafter, the Binding MOU) (C-21).

<sup>33</sup> Total Regularization Scheme, p. 4 (C-20).

<sup>34</sup> *Id.*, pp. 4-5.

<sup>35</sup> *Id.*, p. 6.

<sup>36</sup> Binding MOU, p. 1 (C-21).

exploitation by Calica of the Private Terminal, and [the use] by API Quintana Roo of the Public Terminal, as well as other outstanding issues involving Calica's operations[.]”<sup>37</sup>

78. In the Binding MOU, the State of Quintana Roo and the Municipality of Solidaridad agreed, *inter alia*, to “take the necessary actions before municipal and state authorities ... to promote the execution of the social object and business of CALICA,”<sup>38</sup> including to resolve the *lacuna* created by the POEL by “revis[ing] the [POEL] to arrange ... for the inclusion of ‘mining and exploitation of petreous material’ at [...] La Adelita.”<sup>39</sup> In addition, the State of Quintana Roo agreed, *inter alia*, to (i) issue a new environmental impact authorization to increase the area and extend the term for the extraction of limestone in La Adelita and El Corchalito, (ii) dismiss any outstanding penalties assessed in relation with the collection of the Calica Tax, and (iii) reduce the assessed property value (cadastral value) of La Adelita and El Corchalito.<sup>40</sup>

79. Calica, in turn, assumed several obligations that were conditioned upon the State of Quintana Roo's and the Municipality of Solidaridad's compliance with their respective obligations in the Binding MOU.

80. On 13 May 2015, the relevant parties amended the Binding MOU to reflect additional obligations that the Municipality of Solidaridad and the State of Quintana Roo had undertaken to amend the POEL (the “Amended Binding MOU”). Notably, the Municipality of Solidaridad and the State of Quintana Roo agreed that the amended POEL would be enacted no later than 5 December 2015.<sup>41</sup>

**F. THE STATE PARTIES BREACHED THE 2014 AGREEMENTS AND ADOPTED ADDITIONAL ADVERSE MEASURES AGAINST CALICA THAT HAVE TRIGGERED THE DISPUTE SUBMITTED TO ARBITRATION**

81. Although Calica has complied with its obligations under the Total Regularization Scheme and the Binding MOU, as amended, its counterparties have breached several of their obligations under those agreements that have triggered new disputes related to (i) Calica's ability

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<sup>37</sup> *Id.*, p. 1.

<sup>38</sup> *Id.*, p. 3.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*, pp. 3-5.

<sup>41</sup> Addendum to the Binding Memorandum of Understanding entered into by Calica, API Quintana Roo, the State of Quintana Roo, and the Municipality of Solidaridad dated 13 May 2015, p. 4 (hereinafter, the Amended Binding MOU) (C-22).

to conduct extraction activities in La Adelita, (ii) Calica's rights under the Calica Port Concession, and (iii) certain taxes applicable to Calica's operations. In addition, Mexico has adopted measures that have impaired Calica's ability to conduct operations in El Corchalito. Mexico's conduct has caused Legacy Vulcan and Calica substantial losses and impaired the optimal operation of their investments in Mexico.

**1. Disputes Arising Out of Mexico's and Its Instrumentalities' Breaches of their Obligations Under the 2014 Agreements**

**a) The La Adelita Dispute**

82. As explained in Section IV.D.2, the enactment of the POEL, which prohibits extraction activities in La Adelita but grandfathered Calica's vested rights to conduct mining activities in that lot, created uncertainty because the relevant federal and municipal regulatory framework does not expressly contemplate the issuance of certain ancillary permits to remove vegetation in lots with grandfathered rights. Accordingly, the State of Quintana Roo and the Municipality of Solidaridad — recognizing Calica's right and legitimate expectations to conduct operations in that lot — agreed to resolve this *lacuna* through an amendment to the POEL.

83. According to the Amended Binding MOU, the State of Quintana Roo and the Municipality of Solidaridad were required to enact an amendment to the POEL — no later than 5 December 2015 — to explicitly reflect Calica's rights to quarry and exploit stone material in La Adelita. However, those parties have failed to comply with their obligation, and Calica has been unable to pursue quarrying operations in that lot.

84. Furthermore, since 2017, there have been no indications that the State of Quintana Roo intends to comply with its obligations under the Amended Binding MOU. Quite to the contrary, in March 2017, Quintana Roo's legislature issued an official statement urging SEMARNAT and the Municipality of Solidaridad not to proceed with the amendment to the POEL, as agreed in the Amended Binding MOU. And in August 2017, the State of Quintana Roo sought to further modify the Amended Binding MOU to require that Calica donate certain additional valuable areas to the API Quintana Roo and condition the performance of its obligations under the Amended Binding MOU to Calica's accepting Quintana Roo's new demand.

85. More recently, the State of Quintana Roo's intention became unequivocal when it conveyed to Calica that the State would not comply with its obligations under the Amended Binding MOU. As a consequence of the State of Quintana Roo's and the Municipality of

Solidaridad's repudiation of their obligations under the Amended Binding MOU, Calica has been unable to pursue quarrying operations in La Adelita and has suffered damages as a consequence.

**b) The Calica Port Concession Dispute**

86. In the Total Regularization Scheme, Calica agreed, *inter alia*, to (i) withdraw the Appraisal Litigation and the Port Fees Litigation,<sup>42</sup> (ii) continue paying the increased concession contributions,<sup>43</sup> and (iii) transfer the public terminal and the ZOFEMAT Concession to the API Quintana Roo.<sup>44</sup> All of these obligations were conditioned upon Mexico's and its instrumentalities' compliance with their respective obligations under the Total Regularization Scheme and the Amended Binding MOU.

87. In turn, the SCT specifically agreed, *inter alia*, to (i) end the 2013 Revocation Proceedings,<sup>45</sup> (ii) assist the INDAABIN to conduct an adequate appraisal of Calica's assets to calculate its concession contributions,<sup>46</sup> (iii) extend the term of the Calica Port Concession until 2037,<sup>47</sup> and (iv) amend the API Quintana Roo's Port Concession to include the public terminal.<sup>48</sup>

88. Although the SCT has extended the Calica Port Concession until 2037 and discontinued the 2013 Revocation Proceedings, it has failed to comply with its obligation to assist the INDAABIN to conduct an adequate appraisal of Calica's assets. In addition, the SCT has been unable to comply with its obligation to amend the API Quintana Roo's Port Concession because the State of Quintana Roo and the Municipality of Solidaridad have failed to comply with their obligation under the Amended Binding MOU to amend the POEL by December 2015.

89. Furthermore, when the Supreme Court ruled in 2017 in the Port Fees Litigation that the second amendment to the API Quintana Roo concession was illegal and that API Quintana Roo had wrongly collected port fees from Calica, the SCT ordered the Harbor Master to continue collecting those fees. Immediately thereafter, Calica filed an action before the Federal

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<sup>42</sup> Total Regularization Scheme, p. 4 (C-20).

<sup>43</sup> *Id.*, p. 4.

<sup>44</sup> *Id.*, pp. 4, 6.

<sup>45</sup> *Id.*, p. 4.

<sup>46</sup> *Id.*, p. 6.

<sup>47</sup> *Id.*, p. 5.

<sup>48</sup> *Id.*, pp. 4, 5.

Administrative Tribunal challenging this measure. On 19 September 2018, the Federal Administrative Tribunal declared that SCT's order was unlawful.

90. In respect of the Appraisal Litigation, notwithstanding that in 2017 the Federal Administrative Tribunal held in that the increased concession contributions were illegal and that the SCT should not collect those contributions, the SCT has continued demanding Calica to pay them. In fact, in breach of the Federal Administrative Tribunal's decision, on 20 September 2018, INDAABIN issued a new appraisal — once again contrary to the terms of the Calica Port Concession, federal law and the 2014 Agreements — setting forth an even higher appraisal value and thus demanding a higher concession contributions.

91. More recently, in May 2018, in violation of the 2014 Agreements, the API Quintana Roo requested the SCT to again modify its concession to include the public terminal and certain water areas within and/or adjacent to Punta Venado, so that it could collect port fees from all vessels that sail into the Punta Venado terminals. Calica has not been formally notified of such request, nor has it been made a party to the relevant proceeding.

### **c) The Tax Disputes**

92. Since 2008, the State of Quintana Roo has collected the so-called Calica Tax. As explained above, this tax is unlawful under Mexican law, because the State of Quintana Roo does not have the power to tax extraction activities below the water table.

93. Additionally, the State of Quintana Roo has enforced the Calica Tax on a discriminatory basis. While several other companies in the State of Quintana Roo are subject to the Calica Tax, those companies seldom pay the tax and do not undergo the lengthy and thorough audits to which Calica has been subjected.

94. In the Binding MOU, the State of Quintana Roo agreed to dismiss all penalties assessed against Calica related to the Calica Tax. However, the State of Quintana Roo failed to comply with that obligation and, in October 2017, commenced proceedings to freeze and attach Calica's assets and collect the illegitimate penalties. As a consequence, Calica was forced to pay more than US\$1 million in taxes and illegitimate penalties.

95. In respect of the real estate tax, in the Binding MOU, the Municipality of Solidaridad agreed to reduce the assessed property value (cadastral value) of La Adelita and El Corchalito, and Calica agreed to pay that tax subject to the Municipality's complying with its

obligation to amend the POEL. However, the Municipality has failed to comply with that obligation and has sought to forcibly collect the tax even though it has yet to amend the POEL.

## **2. The El Corchalito Dispute**

96. On 15 May 2017, PROFEPA inspectors visited El Corchalito to verify Calica's compliance with the Corchalito/Adelita Federal EIA, which authorized Calica's extraction activities below the water table in El Corchalito and La Adelita (the "First Inspection"). Because PROFEPA had previously issued a Clean Industry Certificate to Calica, Calica was deemed to be in compliance with all environmental permits and regulations, and PROFEPA was required to show that it had a valid basis to inspect Calica. PROFEPA showed none, and nonetheless proceeded with the inspection.

97. As part of the First Inspection, PROFEPA's inspectors purported to calculate the amount of limestone and surface areas that Calica had quarried at El Corchalito. However, the inspection conducted by PROFEPA was flawed, because (i) the inspectors failed to describe in detail the methodology employed during the inspection, (ii) the instruments used by the inspectors were not properly calibrated, and (iii) the calculations provided by PROFEPA were merely approximations. Accordingly, in September 2017, Calica challenged PROFEPA's calculations by appointing an expert to provide an opinion on the methodology used for the inspection and the measurements obtained by PROFEPA. In response, PROFEPA appointed one of its employees to provide an opinion on the measurements.

98. In late October 2017, the expert appointed by Calica and the PROFEPA employee concluded that PROFEPA's measurements from the First Inspection were incorrect. Consequently, in November 2017, PROFEPA ordered a second inspection, which was conducted a few weeks later (the "Second Inspection"). The Second Inspection was equally flawed, because PROFEPA again used an inaccurate methodology and inadequate instruments to obtain the measurements, and the PROFEPA inspectors who performed the measurements did not have the required qualifications for the task. Accordingly, Calica challenged the measurements and conclusions of the Second Inspection in proceedings before federal courts in Mexico.

99. In retaliation for Calica's legal challenge to the Second Inspection, PROFEPA commenced an administrative proceeding against Calica and, in January 2018, PROFEPA suspended Calica's operations in El Corchalito indefinitely (the "PROFEPA Proceeding"). PROFEPA also ordered Calica to provide additional voluminous and burdensome information to

avoid a permanent shut down. PROFEPA's suspension occurred a few days after officials of the API Quintana Roo threatened that they would use all available means to impair Calica's activities.

100. PROFEPA violated Calica's due process rights during the PROFEPA Proceeding. *First*, PROFEPA deprived Calica of its right to be heard by ignoring the evidence in the record. For instance, PROFEPA suspended Calica's operations in El Corchalito even though the evidence in the record shows acknowledged irregularities in PROFEPA's methodology to conduct the Second Inspection. *Second*, PROFEPA improperly reversed the burden of proof. Although it was PROFEPA's burden to prove that Calica had breached the Corchalito/Adelita Federal EIA, PROFEPA prevented Calica from quarrying in El Corchalito indefinitely on the ground that Calica purportedly failed to prove that its exploitation of El Corchalito was in accordance with its authorization. *Third*, PROFEPA did not properly notify Calica of its decision to suspend operations at El Corchalito. *Fourth*, PROFEPA's indefinite suspension is disproportionate to the fault Calica allegedly committed (purportedly having exceeded in less than one percent the area where it was allowed to conduct quarrying operations over a period of 20 years). *Fifth*, the measure is retaliatory in nature, as Calica recently learned, and has no factual or legal basis.

101. Although Calica complied with PROFEPA's demands and requests for information, as of the date of this Request for Arbitration, Calica has not been allowed to resume quarrying activities in El Corchalito, which has caused damages to Calica.

## **V. RESPONDENT'S BREACHES OF NAFTA**

102. Claimant's claims and their legal bases therefor will be explained in detail at the appropriate stage of this proceeding. The following statement of claims is aimed at showing that, for the purposes of Institution Rule 2(1)(e), the investment dispute hereby submitted to ICSID arbitration is a legal dispute arising directly out of Claimant's investments in Mexico.

103. Respondent's measures described in the preceding paragraphs, including the repudiation by Mexico and its instrumentalities of their respective obligations under the 2014 Agreements, including the Amended Binding MOU, have been arbitrary. In particular, Respondent's failure to amend the POEL by 5 December 2015 pursuant to the Amended Binding MOU has frustrated Claimant's legitimate expectations, *inter alia*, to pursue quarrying operations in La Adelita. Respondent's repudiation of the 2014 Agreements has also frustrated Legacy Vulcan's legitimate expectation to resolve all previous issues that have impaired the optimal operation of its investments in Mexico.

104. Additionally, Respondent's collection of port fees and efforts to collect inflated concession contributions from Calica in violation of court decisions and its refusal to reimburse those illegally-collected payments is arbitrary and has resulted in losses to Claimant and its investments. Moreover, Respondent's failure to comply with its obligations under the Total Regularization Scheme, including its obligation to assist INDAABIN to conduct an adequate appraisal of Calica's assets, is also arbitrary and continues to be the source of numerous disputes.

105. Furthermore, the imposition, enforcement and collection by Respondent, including its instrumentalities, of the Calica Tax, which is unlawful under Mexican law, and the real estate tax has been arbitrary and discriminatory. Additionally, the Respondent's failure to comply with its obligations under the Binding MOU in respect of the Calica Tax and the real estate tax, both of which Respondent continues to collect, and Respondent's attachment of Claimant's assets to collect penalties from the Calica Tax, have resulted in losses for Claimant and its investments.

106. Finally, the Respondent's measures regarding El Corchalito, including PROFEPA's conduct during the First Inspection and the Second Inspection and the PROFEPA Proceeding, as well as the retaliatory and indefinite suspension of Claimant's operations in El Corchalito, are arbitrary and contrary to due process. Moreover, if the suspension is not lifted or if the Corchalito/Adelita Federal EIA were to be cancelled in the context of that proceeding or otherwise, that measure will amount to an indirect expropriation of Claimant's investments.

107. The Respondent has breached several of its obligations under Chapter 11, Section A of NAFTA (including the provisions of treaties with other States that are incorporated by the most-favored-nation clause of NAFTA Article 1103), customary international law, and Mexican law.

108. In particular, Respondent's violations of NAFTA include, *inter alia*, its failure (i) to accord to investments of Legacy Vulcan treatment in accordance with international law, including fair and equitable treatment and full protection and security (Article 1105 - Minimum Standard of Treatment); (ii) to observe the obligations it has assumed regarding investments (an international obligation that is applicable through the most-favored-nation clause of Article 1103 of NAFTA); and (iii) to provide Legacy Vulcan, and its investments, the same favorable treatment that it provides to Mexican investors, and their investments, in like circumstances (Article 1102 - National Treatment).

109. The Respondent's breaches of its international obligations under NAFTA, customary international law, and Mexican law have caused, and continue to cause, grave damage to Claimant and its investments, including Calica, in an amount to be established at the proper stage of this proceeding.

110. Claimant reserves the right to raise claims regarding additional breaches by Respondent under NAFTA, customary international law, or Mexican law, including a claim for expropriation of its investments if Respondent continues adopting adverse measures against Claimant, Calica or their investments.

## **VI. CONSTITUTION OF THE TRIBUNAL AND PLACE OF THE PROCEEDING**

111. In accordance with NAFTA Articles 1123 and 1124, Claimant requests the constitution of an arbitral tribunal under Article 37(2)(a) of the ICSID Convention. Accordingly, "the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties."

112. If the Parties fail to constitute the Tribunal within 90 days from the date of the receipt of this Request for Arbitration, however, then the ICSID Secretary-General shall constitute the Tribunal pursuant to NAFTA Articles 1124(2) and (4).

113. Pursuant to NAFTA Article 1130(a) and Article 62 of the ICSID Convention, the arbitration proceeding shall be held at Washington D.C., the seat of the Centre.

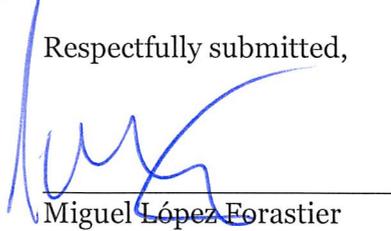
## **VII. REQUEST FOR RELIEF**

114. For the foregoing reasons, the Claimant respectfully makes the following request for relief, with full reservation of its right to amend or supplement such request: that the Secretary General register this Request for Arbitration; that a tribunal be constituted in accordance with the ICSID Convention and NAFTA to resolve the present investment dispute; and that, following the appropriate procedure, the Tribunal render an award in favor of the Claimant:

- a. Declaring that the Respondent has breached NAFTA
  - i. by failing to accord Claimant's investments, including Calica, fair and equitable treatment and full protection and security in violation of Article 1105;

- ii. by failing to observe the obligations it has assumed regarding the Claimant's investments (an international obligation that is applicable through the most-favored-nation clause of Article 1103 of NAFTA); and
  - iii. by failing to accord Claimant's investments, including Calica, treatment no less favorable than it accords to its own investors in violation of Article 1102.
- b. Ordering Respondent to pay to Claimant full reparation in accordance with NAFTA and customary international law, in an amount to be established in the proceeding, plus compound interest thereon in accordance with applicable law and gross up of any taxes that may be imposed by Respondent on or affecting such compensation;
  - c. Ordering Respondent to pay all costs and expenses of this arbitration proceeding, including the fees and expenses of the Tribunal and the cost of legal representation, plus interest thereon in accordance with applicable law; and
  - d. Such other or additional relief as may be appropriate under the applicable law or may otherwise be just and proper.

Respectfully submitted,



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## GLOSSARY

<b>2013 Revocation Proceeding</b>	Proceeding commenced by the SCT on 7 May 2013 to revoke the Calica Port Concession.
<b>2014 Agreements</b>	The Total Regularization Scheme and the Binding MOU, as amended.
<b>Amended Binding MOU</b>	Amendment to the Binding MOU, dated 13 May 2015.
<b>API Quintana Roo</b>	Integral Port Administration of Quintana Roo ( <i>Administración Portuaria Integral de Quintana Roo, S.A. de C.V.</i> ).
<b>API Quintana Roo Concession</b>	API Quintana Roo's concession to operate all port facilities in the State of Quintana Roo, issued by the SCT in 1994.
<b>API Quintana Roo Concession Amendment</b>	February 2003 amendment to the API Quintana Roo Concession by the SCT to include in that concession the public terminal that had been originally granted to Calica under the Calica Port Concession.
<b>Appraisal Litigation</b>	Legal action initiated by Calica on 1 September 2010 before the Federal Administrative Tribunal to challenge the appraisal of Calica's assets to calculate its concession contributions and the SCT's attempt to collect the increased concession contributions.
<b>Binding MOU</b>	Memorandum of Understanding entered into by Calica, the API Quintana Roo, the State of Quintana Roo, and the Municipality of Solidaridad on 12 June 2014.
<b>C-[No.]</b>	Claimant's exhibits.
<b>Calica</b>	Calizas Industriales del Carmen, S.A. de C.V.
<b>Calica Port Concession</b>	Calica's concession to operate its Port Terminal, issued by the SCT on 21 April 1987, as amended.
<b>Calica Tax</b>	Extraction tax collected by the State of Quintana Roo that mainly targets Calica's activities.
<b>Claimant</b>	Legacy Vulcan, LLC.
<b>Consent/Waiver Letter</b>	Legacy Vulcan, LLC's and Calizas Industriales del Carmen, S.A. de C.V.'s executed instrument of consent and waiver, dated 3 December 2018.

## **GLOSSARY**

<b>Corchalito/Adelita Federal EIA</b>	Calica's federal Environmental Impact Authorization to conduct extraction activities below the water table in El Corchalito and La Adelita, issued by SEMARNAT in 2000 and valid until December 2020.
<b>Corchalito/Adelita State EIA</b>	Calica's state Environmental Impact Authorization to engage in the extraction of limestone above the water level in El Corchalito and La Adelita, issued by the Ministry of Infrastructure, Environment, and Fisheries of Quintana Roo in December 1996 and valid until 2036.
<b>Extraction Plant</b>	Calica's limestone quarry and processing plant in La Rosita.
<b>Federal Administrative Tribunal</b>	Federal Administrative and Fiscal Tribunal ( <i>Tribunal Federal de Justicia Administrativa</i> and previously the <i>Tribunal Federal de Justicia Fiscal y Administrativa</i> ).
<b>First Inspection</b>	PROFEPA inspection of El Corchalito in May 2017 to verify Calica's compliance with the Corchalito/Adelita Federal EIA.
<b>ICSID Convention</b>	Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
<b>ICSID Institution Rules</b>	ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.
<b>INDAABIN</b>	National Institute of Administration and Appraisals of National Assets ( <i>Instituto Nacional de Administración y Avalúos de Bienes Nacionales</i> ) in charge of calculating Calica's concession contributions.
<b>Investment Agreement</b>	Agreement entered into by Calica, Mexico, and the State of Quintana Roo on 6 August 1986.
<b>Legacy Vulcan</b>	Legacy Vulcan, LLC.
<b>Mexico</b>	United Mexican States.
<b>NAFTA</b>	North American Free Trade Agreement, entered into between Canada, Mexico, and the United States on 1 January 1994.
<b>Notice of Intent</b>	Legacy Vulcan LLC's and Calica's Notice of Intent to Submit a Claim to Arbitration under NAFTA Chapter 11, dated 3 September 2018.

## **GLOSSARY**

<b>POEC</b>	Cozumel Municipality Program for Ecological Order ( <i>Programa de Ordenamiento Ecológico del Municipio de Cozumel</i> ).
<b>POEL</b>	Local Environmental Order Program ( <i>Programa de Ordenamiento Ecológico Local</i> ).
<b>POET</b>	State Program for Ecological Order ( <i>Programa de Ordenamiento Ecológico Territorial</i> ).
<b>Port Fees Litigation</b>	Legal action initiated by Calica in 2007 to challenge that year's amendment to the API Quintana Roo Concession and the SCT's and the API Quintana Roo's demands for payment of port fees.
<b>Port Terminal</b>	The public and private terminals built and operated by Calica in Punta Venado.
<b>PROFEPA</b>	Federal Attorney's Office for Environmental Protection ( <i>Procuraduría Federal de Protección al Ambiente</i> ).
<b>PROFEPA Proceeding</b>	Administrative proceeding commenced by PROFEPA against Calica in retaliation for Calica's legal challenge to the Second Inspection.
<b>Project</b>	Claimant's Extraction Plant, Port Terminal and fleet of vessels to export the petrous materials quarried at La Rosita, El Corchalito, and La Adelita.
<b>Rancho Piedra Caliza</b>	Rancho Piedra Caliza, S.A. de C.V.
<b>Real Estate Tax Litigations</b>	Actions commenced by Calica before local Mexican courts challenging the Municipality of Solidaridad's assessed property value (cadastral value) of certain lots and the Municipality's efforts to collect the real estate tax.
<b>SCT</b>	Ministry of Communications and Transportation ( <i>Secretaría de Comunicaciones y Transportes</i> ).
<b>Second Inspection</b>	Inspection ordered by PROFEPA in November 2017 after the First Inspection.
<b>SEMARNAT</b>	Secretariat of Environment and Natural Resources ( <i>Secretaría de Medio Ambiente y Recursos Naturales</i> ).
<b>United States</b>	United States of America.

## **GLOSSARY**

### **ZOFEMAT**

Federal maritime-terrestrial zone (*zona federal marítimo-terrestre*).

### **ZOFEMAT Concession**

Calica's concession to use the so-called federal maritime-terrestrial zone, issued by SEMARNAT in March 1992 and set to expire in 2025.