

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

832



FROM: County Counsel

SUBMITTAL DATE:
June 13, 2013

SUBJECT: AMENDED INDEMNIFICATION AGREEMENT BETWEEN COUNTY AND KAISER EAGLE MOUNTAIN, LLC REGARDING EAGLE MOUNTAIN MINE

RECOMMENDED MOTION: That the Board of Supervisors approve and authorize the Chairman to sign the attached amended indemnification agreement between the County of Riverside and Kaiser Eagle Mountain, LLC.

BACKGROUND: On May 18, 2010, the Board authorized entering into an indemnification agreement with Kaiser Eagle Mountain, LLC ("Kaiser") regarding County Counsel's issuance of a letter to Kaiser concerning rock shipments from Kaiser's Eagle Mountain Mine.

Presently, Kaiser has submitted for County approval an Interim Management Plan ("IMP") for Eagle Mountain Mine consistent with the newly enacted Public Resources Code section 2777.5 (Senate Bill 108) and Ordinance No. 555. The Planning Department is currently reviewing the IMP. Under Ordinance No. 555, an IMP is reviewed and approved by the Planning Director.

Departmental Concurrence

(continued on page 2)

Anita Willis
Anita Willis, Assistant County Counsel for
Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ NA	In Current Year Budget:	NA
	Current F.Y. Net County Cost:	\$ NA	Budget Adjustment:	NA
	Annual Net County Cost:	\$ NA	For Fiscal Year:	NA

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Denise C. Harden*
Denise C. Harden

County Executive Office Signature

Policy

Consent

Dept't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.:

District: 4/4

Agenda Number:

3-74

2013 JUN 13 6:15:03

RE: AMENDED INDEMNIFICATION AGREEMENT BETWEEN COUNTY AND KAISER
EAGLE MOUNTAIN, LLC REGARDING EAGLE MOUNTAIN MINE

June 13, 2013

Page 2

Kaiser is willing to defend and indemnify the County from liability or loss in connection with the County's review and approval of the IMP.

In the attached amended indemnification agreement, Kaiser, at its own expense, shall defend, indemnify and hold harmless the County from and against any claim, action or proceeding brought or asserted by a third person or entity against the County arising out of, related to or in any way connected with (1) the issuance of County Counsel's May 25, 2010 letter and (2) the COUNTY's approval of the IMP, in both cases including any damages, attorneys fees and any claim for private attorney general fees. The amended indemnification agreement between the County and Kaiser further requires that Kaiser maintain a \$200,000 letter of credit to secure the indemnification obligations.

The amended indemnification agreement is not a "project" under the California Environmental Quality Act. Approval of the amended indemnification agreement will not cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment. Further, the review and approval of the IMP by the Planning Director also is not a "project" under CEQA. (Public Resources Code section 2770).

AMENDED INDEMNIFICATION AGREEMENT

This AMENDED INDEMNIFICATION AGREEMENT (“Amended Agreement”), made and entered into this _____, by and between COUNTY OF RIVERSIDE, a political subdivision of the State of California (hereinafter referred to as “COUNTY”), and KAISER EAGLE MOUNTAIN, LLC (hereinafter referred to as “KAISER”), relating to KAISER’S indemnification of the COUNTY under the terms set forth herein, and amending and superseding the agreement between the parties dated May 25, 2010, a copy of which is attached hereto as Exhibit “1”;

WITNESSETH:

WHEREAS, in connection with County Counsel’s issuance of the letter to Kaiser Eagle Mountain, LLC regarding Eagle Mountain Mine (CA Mine ID # 91-33-0060) dated May 25, 2010, a copy of which is attached hereto as Exhibit “A” to Exhibit “1” and incorporated herein by reference, KAISER is willing to indemnify the COUNTY from liability or loss as provided herein; and

WHEREAS, to provide regulatory certainty regarding the Eagle Mountain Mine’s administrative status under the state Surface Mining and Reclamation Act (Public Resources Code section 2710 *et seq* [SMARA]), KAISER has submitted for COUNTY approval an Interim Management Plan (the “IMP”) for Eagle Mountain Mine (CA Mine ID # 91-33-0060) dated April 16, 2013, consistent with SMARA, and KAISER is willing to indemnify the COUNTY from liability or loss in connection with the COUNTY’s review and approval of the IMP, as provided herein;

NOW, THEREFORE, it is mutually agreed between COUNTY and KAISER as follows:

1. ***Indemnification.*** KAISER, at its own expense, shall defend, indemnify and hold harmless the COUNTY, its agents, officers, and employees from and against any claim, action or proceeding brought or asserted by a third person or entity against the COUNTY or its agents, officers, or employees arising out of, related to or in any way connected with (1) the issuance of County Counsel’s May 25, 2010 letter (Exhibit “A” to Exhibit “1”) and (2) the COUNTY’s approval of the IMP, in both cases including any damages, attorneys fees and any claim for private attorney general fees claimed by or that may be awarded to such third party as a result of such claim, action or proceeding (collectively the “**Kaiser Indemnification Obligation**”). To the extent that COUNTY uses any of its resources responding to such claim, action, or proceeding, KAISER will reimburse COUNTY within (30) days of the submission of an itemized statement for these resources. Such resources include, but are not limited to the reasonable expenses and charges related to staff time, court costs, County Counsel’s time at their regular

rate for external or non-County agencies, or any other reasonable direct or indirect costs associated with responding to the claim, action or proceeding.

2. ***Binding Effect.*** KAISER's obligations under this Amended Agreement shall apply regardless of whether KAISER engages in any mined material recovery from the Eagle Mountain Mine. KAISER agrees that its Kaiser Indemnification Obligation shall be binding on successors and assigns of the Eagle Mountain Mine and KAISER shall so obligate all transferees and assigns.

3. ***Defense and Indemnity Procedures.*** The COUNTY shall (i) promptly notify KAISER and provide the details of any third party claim, action or proceeding that the COUNTY asserts is covered by the Kaiser Indemnification Obligation; and (ii) reasonably cooperate in all aspects of the defense of a third-party claim, action or proceeding which the County asserts is covered by the Kaiser Indemnification Obligation. If the COUNTY fails to cooperate in the defense, then KAISER shall not thereafter be responsible to defend, indemnify and hold harmless the COUNTY, its agents, officers, or employees pursuant to this Amended Agreement. After receipt from COUNTY of notice of any claim, or the commencement of any action or proceeding that COUNTY asserts is covered by the Kaiser Indemnification Obligation, KAISER will assume the defense of such claim, action or proceeding, including the employment of counsel reasonably satisfactory to COUNTY and KAISER and the prompt payment of the fees and disbursements of such counsel. In the event, however, the COUNTY reasonably determines that having common counsel would present such counsel with a conflict of interest, or if KAISER fails to assume the defense of the claim, action or proceeding or to employ counsel reasonably satisfactory to COUNTY, in either case in a timely manner, then the COUNTY may employ separate counsel to represent and defend it in any such claim, action or proceeding and KAISER will promptly pay the fees and disbursements of such counsel.

4. ***No Settlement Without Approval of KAISER.*** The COUNTY may not settle or otherwise compromise any third party claim, action or proceeding against the COUNTY for which indemnification of the COUNTY is sought pursuant to the Kaiser Indemnification Obligation without KAISER's prior written consent. KAISER shall not be required to pay or perform any settlement of any such claim, action or proceeding unless the settlement is approved in writing by KAISER.

5. ***Security for Performance of Obligations.*** To secure the Kaiser Indemnification Obligation, KAISER has provided to the COUNTY a letter of credit in the amount of \$200,000.00 subject to the following terms and conditions and upon such other terms and conditions as contained in the letter of credit:

- a. The letter of credit shall automatically expire on the fifteenth (15th) anniversary of the original issuance of the letter of credit unless there

should be a third party claim, action or proceeding covered by the Kaiser Indemnification Obligation outstanding as of the fifteenth (15th) anniversary of the date of the original issuance of the letter of credit, in which case the letter of credit shall continue until such time as there is final resolution of such claim, action or proceeding; and

- b.** The letter of credit may only be drawn upon by the COUNTY after thirty (30) days prior written notice has been given by the COUNTY to KAISER detailing the reasons why the COUNTY asserts KAISER is in default of the Kaiser Indemnification Obligation. During such thirty (30) day period KAISER shall have the right to reasonably cure the asserted default.

6. **Notices.** For all purposes herein, notices shall be effective when personally delivered, delivered by commercial overnight delivery service, or sent by certified or registered mail, return receipt requested, to the appropriate address set forth below:

COUNTY:

County of Riverside
County Executive Officer
4080 Lemon St., 4th Fl.
Riverside, CA 92501

With copy sent to:
Pamela J. Walls
County Counsel
Office of County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501
Telephone: (951)955-6300

KAISER:

Kaiser Eagle Mountain, LLC
Terry Cook, Vice President
One Court Street
P.O. Box 37
Desert Center, CA 92239

Kaiser Eagle Mountain, LLC
Terry Cook, Vice President
337 N. Vineyard Ave., Fourth Flr.
Ontario, CA 91764

7. **Complete Agreement/Governing Law.** This Amended Agreement represents the complete understanding between the parties with respect to matters set forth herein and supersedes the May 25, 2010, agreement between the parties. This Amended Agreement shall be construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have duly caused this Amended Agreement to be executed by their authorized representatives on the date hereinabove first written.

BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

By: _____
Chairman, Board of Supervisors

ATTEST:

Clerk of the Board

By: _____
Deputy

(SEAL)

APPROVED AS TO FORM
June 13, 2013

By: 
ANITA WILLIS
Assistant County Counsel

KAISER EAGLE MOUNTAIN, LLC

By: _____
TERRY L. COOK
Secretary & Vice President
Kaiser Eagle Mountain, LLC

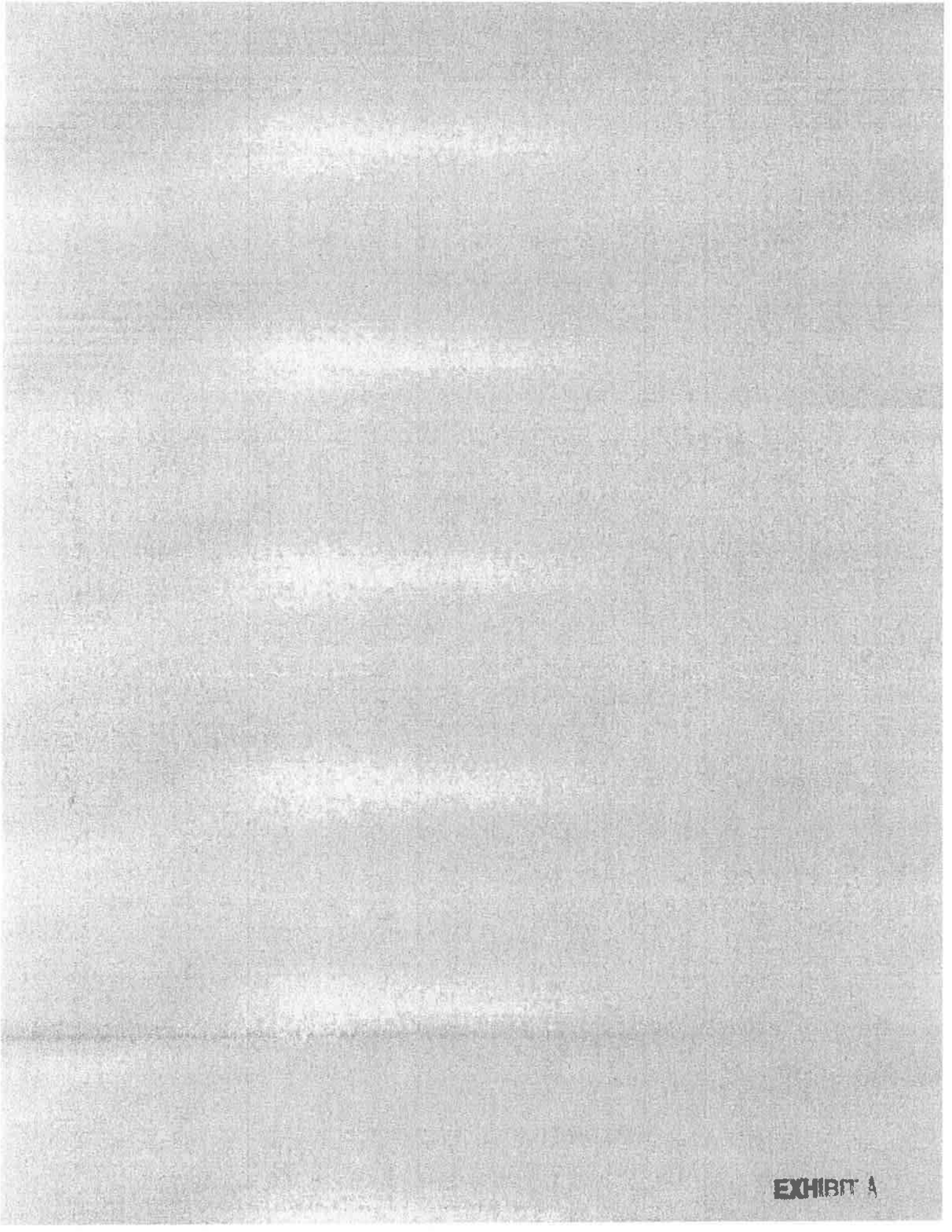


EXHIBIT A

PAMELA J. WALLS
County Counsel

Principal Deputy
KATHERINE A. LIND

OFFICE OF COUNTY COUNSEL
COUNTY OF RIVERSIDE

3960 ORANGE STREET, FIFTH FLOOR
RIVERSIDE, CA 92501-3674
TELEPHONE: 951/955-6300
FAX: 951/955-6322 & 951/955-6363



May 25, 2010

Terry Cook
Vice President
Kaiser Eagle Mountain, LLC
3633 Inland Empire Blvd., Suite 480
Ontario, CA 91764

Re: Eagle Mountain Mine (CA Mine ID # 91-33-0060)

Dear Mr. Cook:

Recently, Kaiser Eagle Mountain, LLC ("Kaiser") notified the County that it intends to fill particular rock orders from material stockpiles at the Eagle Mountain Mine ("Mine") as referenced in the attached letter from Kaiser. Although full-time operation of the Mine was curtailed in 1983, the County has treated Kaiser as having vested mining rights at the Mine because Kaiser continues to engage in surface mining-related activities. These activities include the sale and shipment of overburden as crushed rock and mixed rock product, the maintenance of equipment and roads, and the administration of Kaiser's mining claims.¹ Vested mining rights encompass the removal and transport of mined materials. Therefore, our focus is whether the filing of the particular rock orders is in conformance with Kaiser's approved reclamation plan.

Consistent with the Surface Mining and Reclamation Act (Pub. Resources Code, § 2710 et seq. ["SMARA"]), Kaiser submitted and the County approved a reclamation plan for the Mine in 1980 (amended in 1997), which governs reclamation of the stockpiles from which Kaiser now intends to recover material, identified as "ARA D" and "ARA M." Both SMARA and the County's ordinance implementing SMARA, Ordinance No. 555, establish thresholds and procedures to determine when a reclamation plan must be amended. SMARA provides, in particular, that "substantial deviations" from the approved reclamation plan require a formal reclamation plan amendment. (Pub. Res. Code § 2777; see Cal. Code Regs., tit. 14, § 3502(d).) County Ordinance No. 555 establishes procedures for a reclamation plan amendment, as well as procedures for a "substantial conformance determination," which allows lesser modifications to an approved reclamation plan. (See County Ordinance No. 555, § 13.)

¹ See Eagle Mountain Landfill and Recycling Center Project, Draft Environmental Impact Statement/Environmental Impact Report, 1-2.

Mr. Terry Cook
May 25, 2010
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The approved Mine reclamation plan does not specify an end volume for ARA D or ARA M, but requires only that the stockpiles be left at their "angle of repose" to naturally revegetate. ARA D is approximately 44.74 acres and contains an estimated 1,103,148 tons of stockpiled rock and ARA M is approximately 394.36 acres and contains an estimated 86,611,600 tons of stockpiled rock.² Kaiser's planned recovery from ARA D and ARA M, which does not exceed approximately ten (10) percent of the current volume for both stockpiles, will have no effect on the reclamation plan requirements for the stockpiles. Kaiser must report its actual material recovery in its annual SMARA reports to the County. Overall, recovery from ARA D and ARA M benefits site reclamation by reducing stockpile volume and restoring the site to more gradual contours which will better conform with the surrounding topography. The attached exhibits you provided depict the stockpiles post-recovery, and confirm our judgment in this regard. Kaiser's planned activity, therefore, requires neither a reclamation plan amendment nor a substantial conformance determination under SMARA or County Ordinance No. 555.

Please be aware that the contents of this letter are based on the information known to date and the opinions stated herein are subject to modification if additional information comes to light. The County expressly reserves its right to require a reclamation plan amendment or a substantial conformance application in the event that Kaiser's activities exceed those described in this letter.

Sincerely,

PAMELA J. WALLS
County Counsel



KATHERINE A. LIND
Principal Deputy County Counsel

cc:
Supervisor John J. Benoit
District Four

David L. Jones
Chief Engineering Geologist
TLMA – Planning Department

² "Appraisal Report of the Eagle Mountain Mine Area, Riverside County, California for Proposed Mineral Rights Exchange with the California State Lands Commission" dated October 15, 2003, and prepared by TerraMins, Inc. for the California State Lands Commission and Kaiser Eagle Mountain, LLC.



KAISER VENTURES LLC

May 13, 2010

Katherine Lind, Principal Deputy County Counsel
Office of Riverside County Counsel
3960 Orange Street, 5th Floor
Riverside, CA 92501

KAISER EAGLE MOUNTAIN, LLC
One Court Street
Post Office Box 37
Desert Center, California 92239
760/392-4257
760/392-4341 fax

RE: EAGLE MOUNTAIN MINE (CA MINE ID #91-33-0060)

Dear Ms. Lind:

As your office is aware, Kaiser Eagle Mountain, LLC ("Kaiser") continues to recover material from its stockpiles at the Eagle Mountain Mine ("Mine"). Orders for material from the Mine vary in scale depending on local market demand. We hereby inform the County that Kaiser has recently received several additional orders for rock material to be recovered from two of the Mine's stockpiles in particular, known as "ARA D" and "ARA M."

In earlier communications, we have demonstrated that Kaiser acquired and began operating the Mine prior to state and local permit requirements, and thus possesses vested mining rights under statutory and constitutional principles. The County has accordingly treated the Mine as a vested operation. Following the enactment of the Surface Mining and Reclamation Act (Pub. Resources Code, § 2710 et seq.), Kaiser submitted and the County approved a reclamation plan for the Mine.

Kaiser's ongoing removal of material from its stockpiles, including ARA D and ARA M, is consistent with the Mine's vested status and its reclamation plan. Furthermore, recovery of ten percent of the material from ARA D and ARA M as depicted in the attached exhibits that are incorporated herein by this reference will not substantially deviate from the Mine's approved reclamation plan, and will not require a substantial conformance determination. The attached exhibits demonstrate that Kaiser's planned recovery from the two stockpiles will result in only minor changes to their overall appearance.

To avoid misunderstanding, we kindly request the County confirm whether it will continue to treat the Mine as a vested mining operation. We also request that the County advise us whether recovery of material from the Mine's stockpiles, as described herein, is in conformance with our approved reclamation plan.

Thank you for your attention to this matter, and we look forward to working with you further. Please feel free to contact me at 909.483.8511 with any comments or questions.

Very Truly Yours,

KAISER EAGLE MOUNTAIN, LLC



Terry L. Cook
Vice President

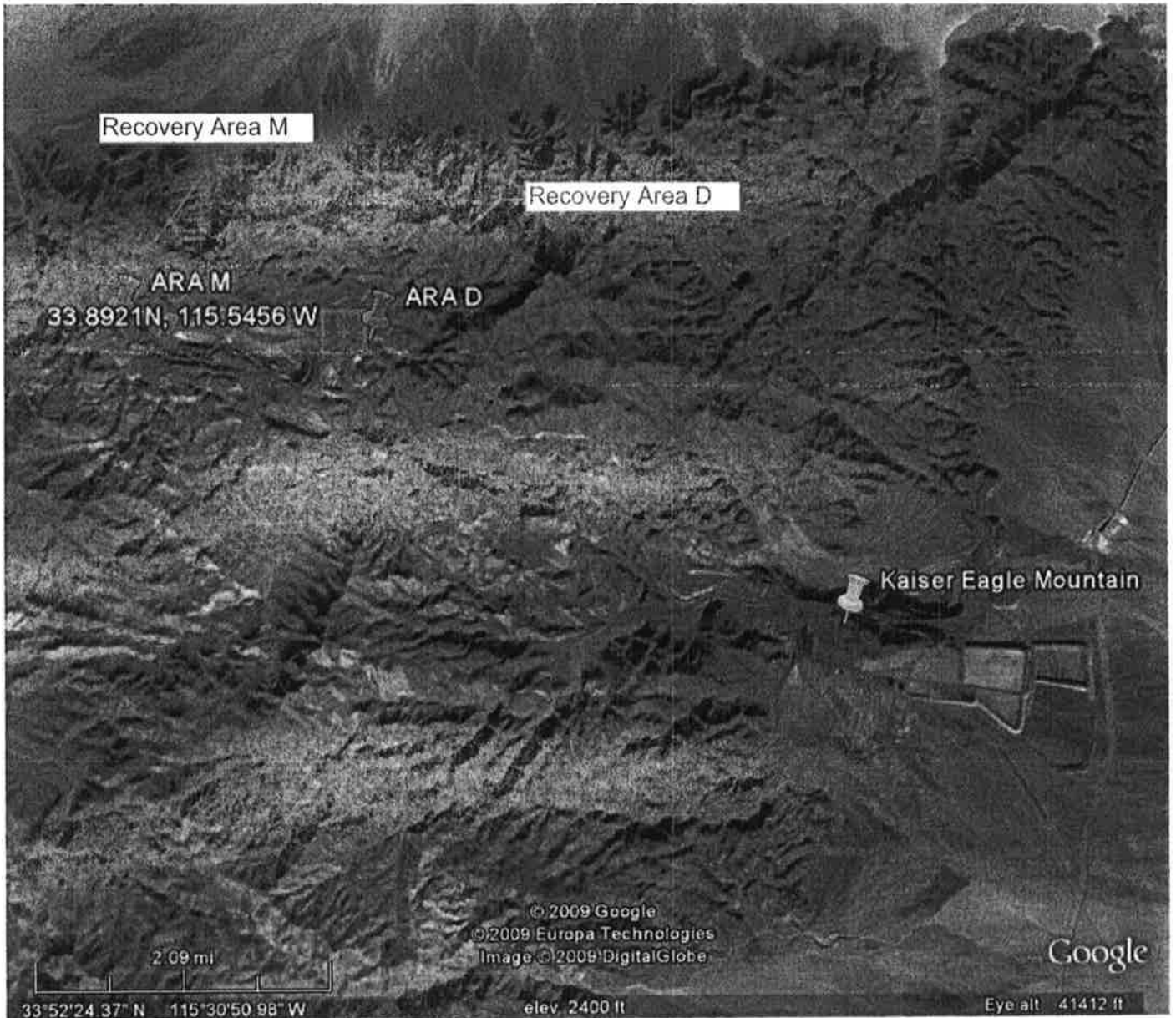
Enclosures

cc: Tiffany North, County of Riverside

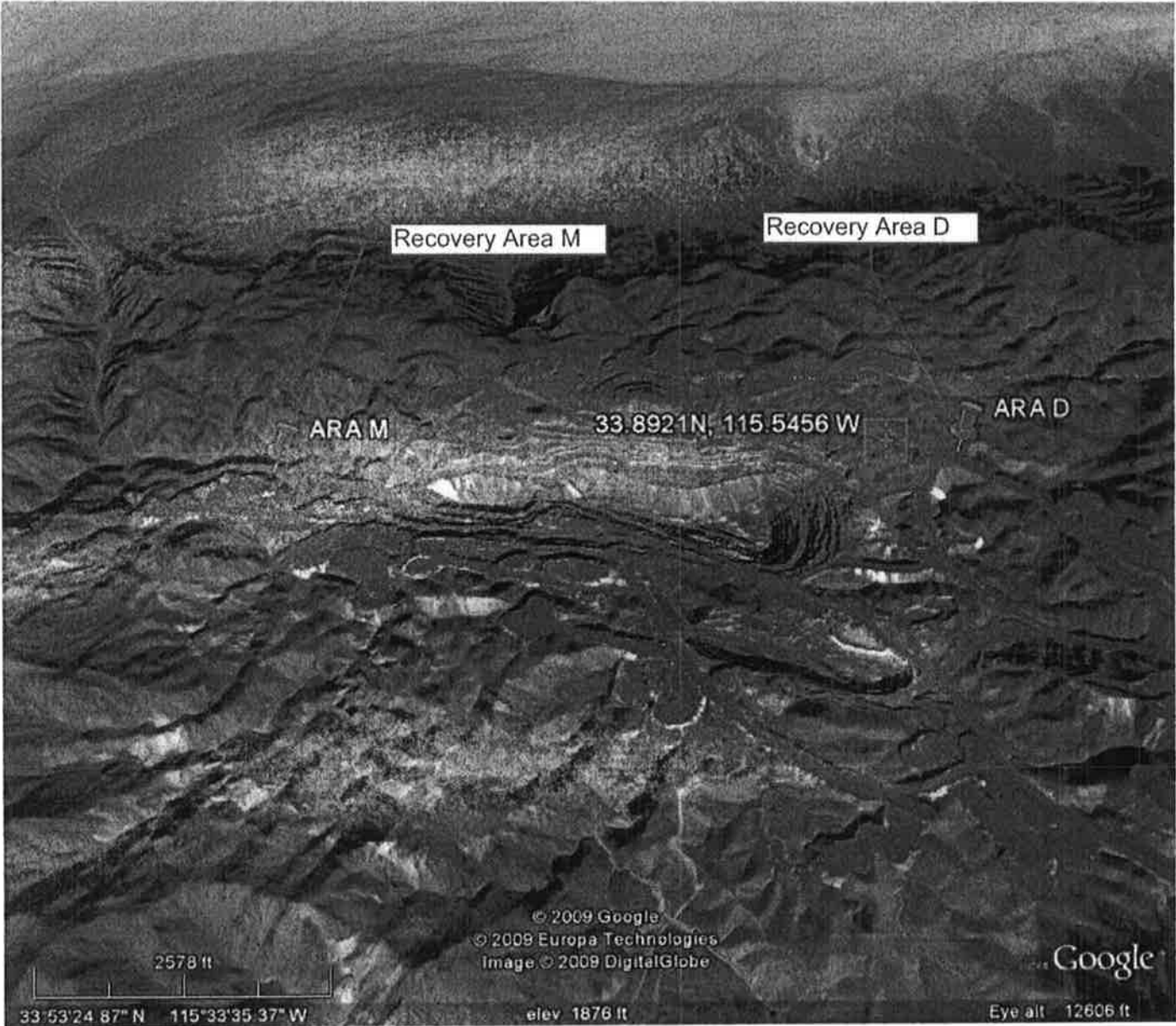
TLC:jpk

terry10\lind-county em confirmation request

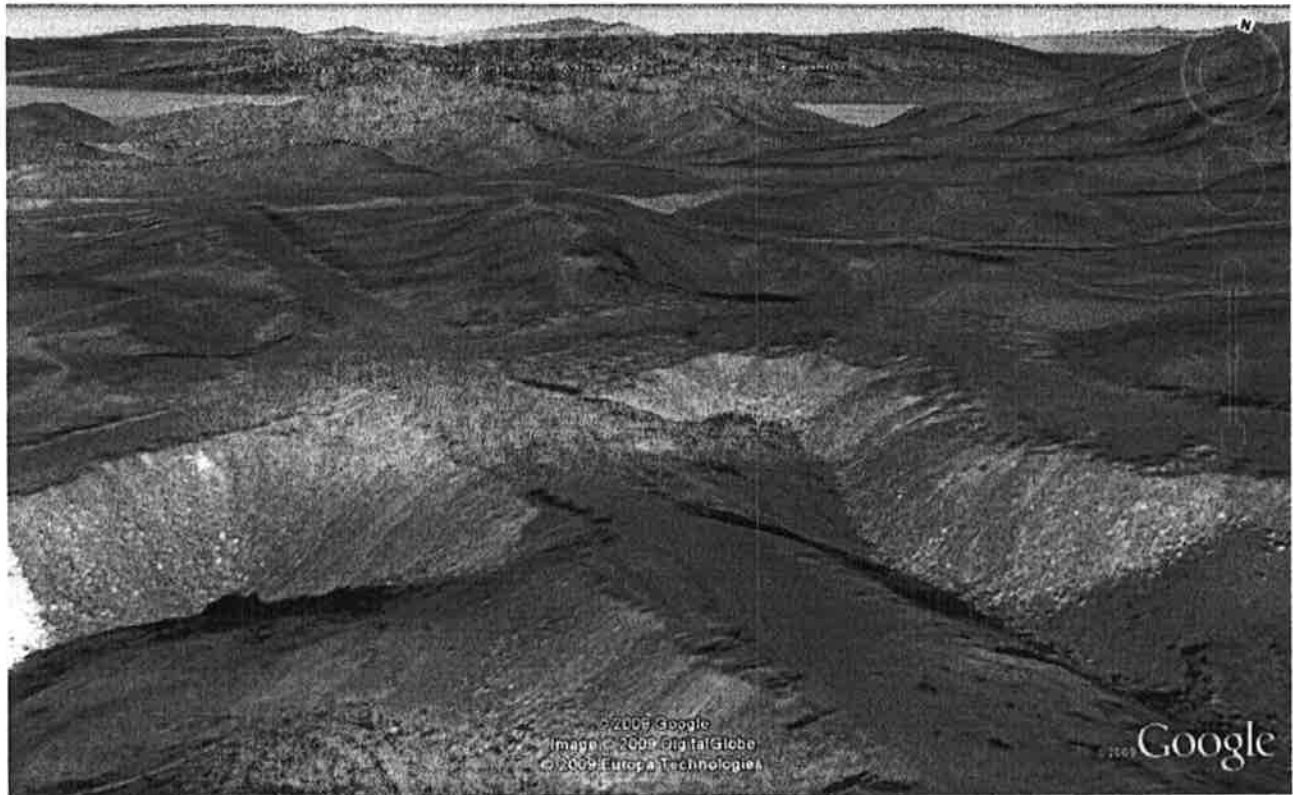
OVERVIEW 1 – Entire Eagle Mountain Mine Site



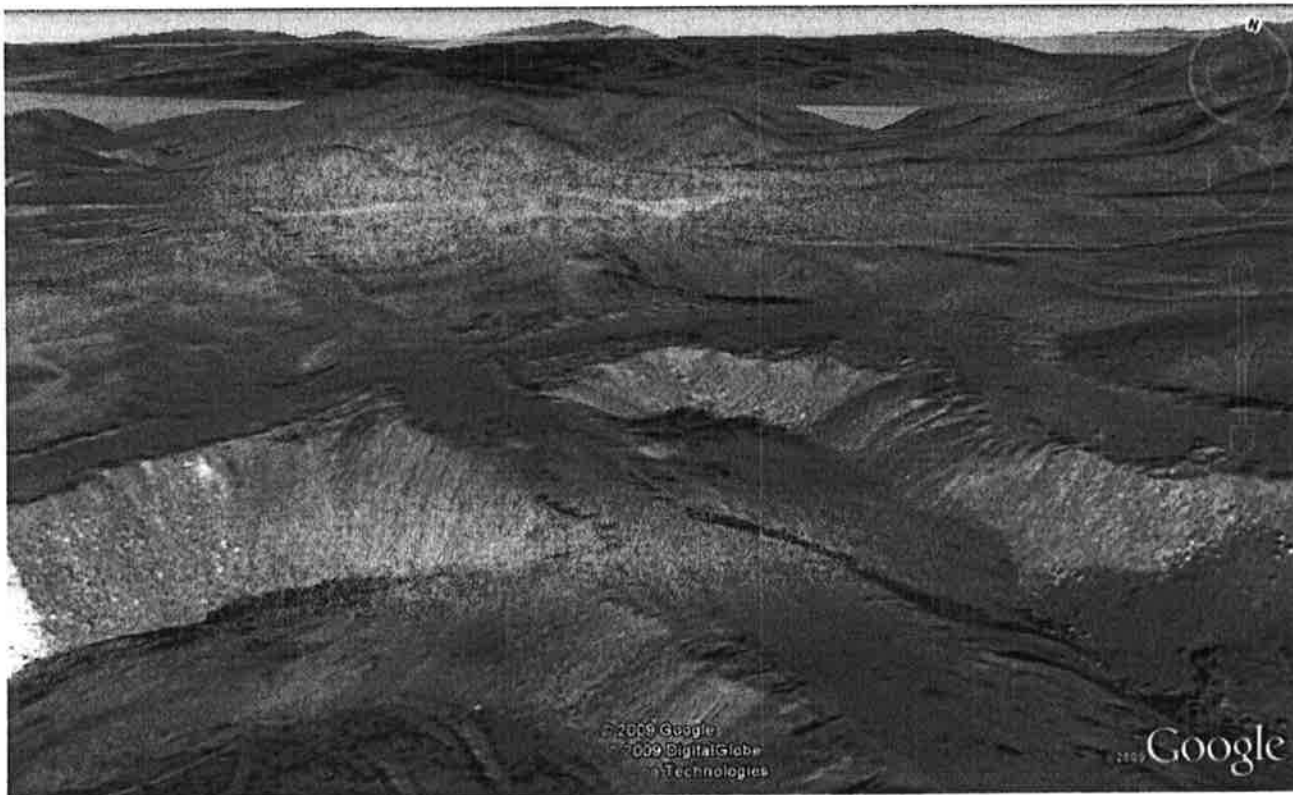
OVERVIEW 2 – Eagle Mountain Mine West Area



ARA D – Current Appearance

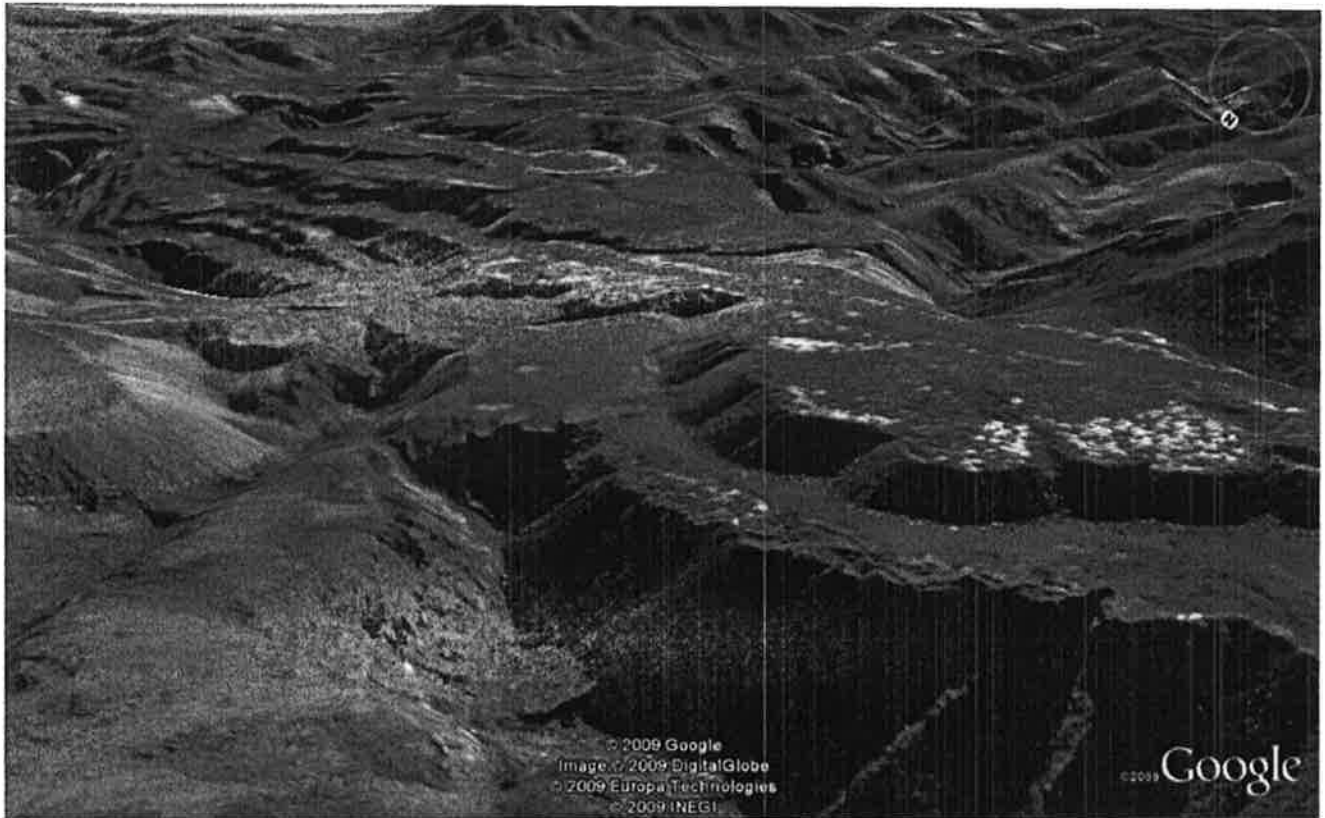


ARA D – After Approximate 10% Recovery from Toes and Slopes

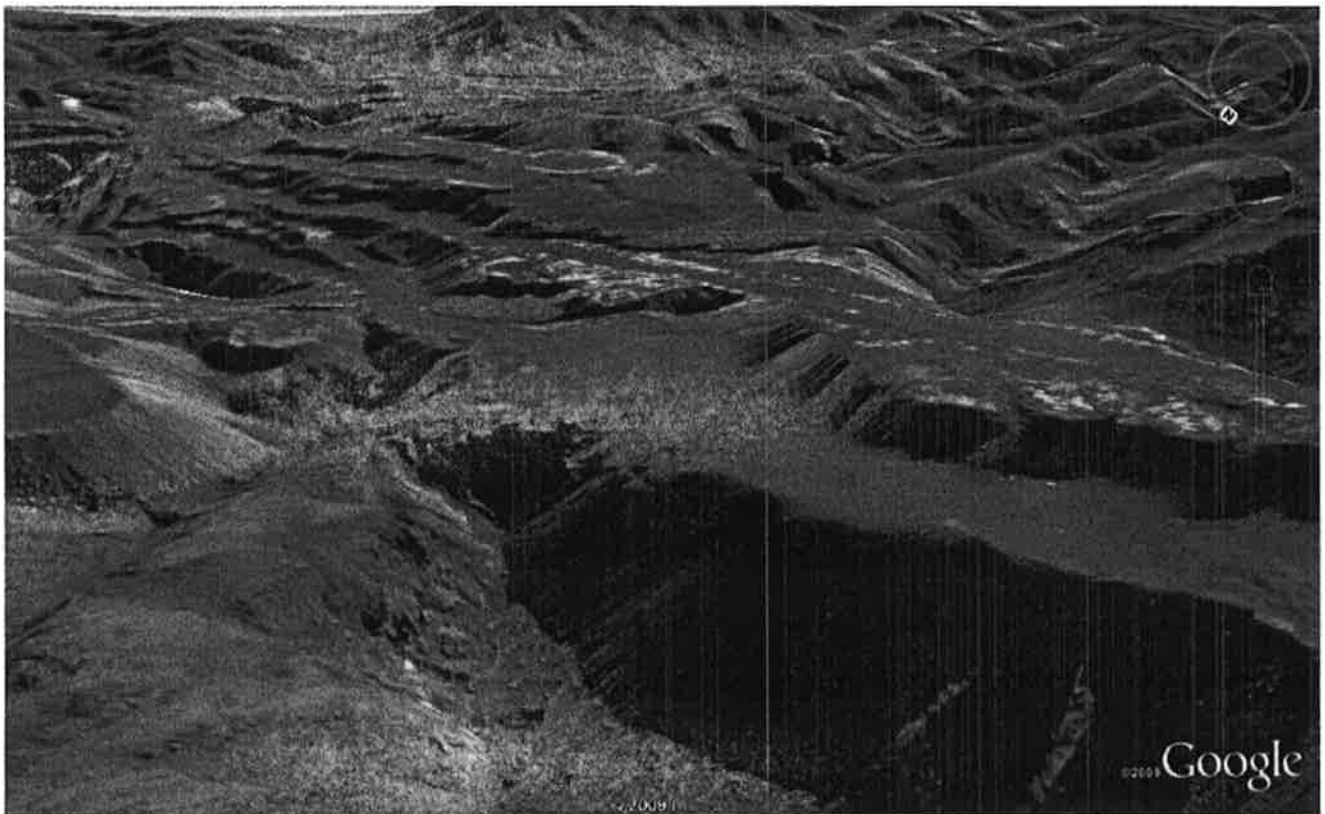


Note: Illustration is not an engineer's drawing, and shows potential recovery points. Actual recovery points may differ.

ARA M – Current Appearance



ARA M – After Approximate 10% Recovery from Toes and Slopes



Note: Illustration is not an engineer's drawing, and shows potential recovery points. Actual recovery points may differ.

OVERVIEW 1 – Entire Eagle Mountain Mine Site

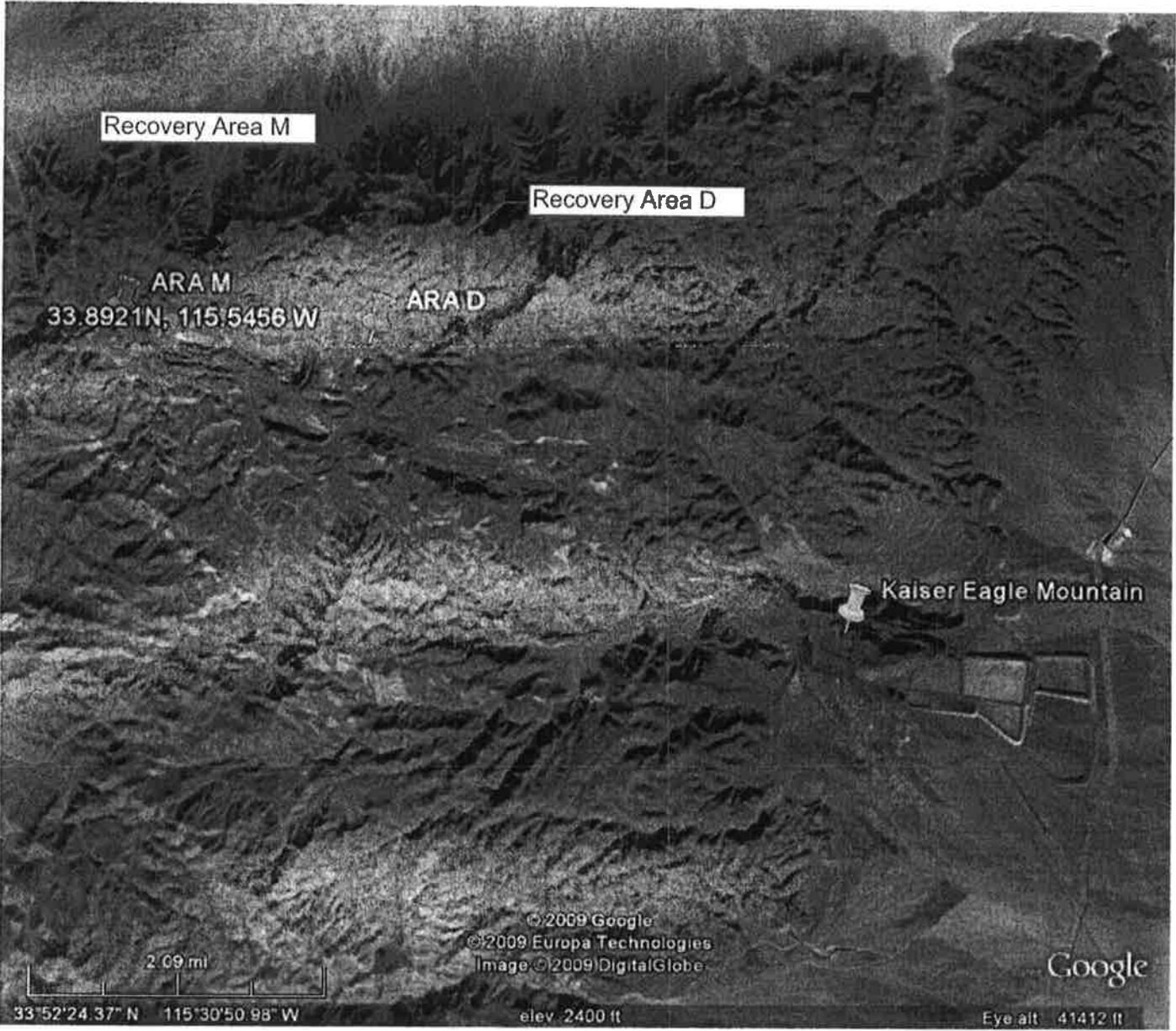


EXHIBIT B



International Services
701 North Haven Avenue, Suite 270
Ontario, California 91764
Phone (909) 980-4030
Fax (909) 481-2101
Swift: CBBKUS6L

May 25, 2010

County of Riverside
Office of Riverside County Counsel
3960 Orange Street, 5th Floor
Riverside, CA 92501

Re: Irrevocable Letter of Credit number 49-SB-4884
For the account of: Kaiser Eagle Mountain, LLC
3633 E. Inland Empire Boulevard, #480
Ontario, California 91764
Amount: \$200,000.00
Expiration: May 31, 2015

Gentlemen:

Citizens Business Bank, at the request of Kaiser Eagle Mountain, LLC, has provided its Irrevocable Standby Letter of Credit, number 49-SB-4884 which is attached hereto in the amount of US\$200,000.00, dated May 25, 2010 in your favor. This will certify that Frank J. Maslowski, Vice President/Manager of International Services of Citizens Business Bank is authorized to provide and execute the attached Irrevocable Letter of Credit, that the signature appearing on said Letter of Credit is authentic, and that the Bank has complied with all FDIC requirements and other applicable laws in connection with the issuance of such Letter of Credit.

Sincerely,

Vince Gottuso
Senior Vice President
Head of Bank Sales Support

Attachment: Letter of Credit number 49-SB-4884



International Services
701 North Haven Avenue, Suite 270
Ontario, California 91764
Phone (909) 980-4030
Fax (909) 481-2101
Swift: CBBKUS6L

May 25, 2010

County of Riverside (Beneficiary)
Katherine Lind, Principal Deputy County Counsel
Office of Riverside County Counsel
3960 Orange Street, 5th Floor
Riverside, CA 92501

Re: Irrevocable Standby Letter of Credit number 49-SB-4884
For the account of: Kaiser Eagle Mountain, LLC (Applicant)
3633 E. Inland Empire Boulevard, #480
Ontario, California 91764
Amount: US\$200,000.00 Expiration: May 31, 2015

We hereby establish our Irrevocable Standby Letter of Credit number 49-SB-4884 at the request and for the account of Kaiser Eagle Mountain, LLC in the aggregate amount of US\$200,000.00 (Two Hundred Thousand and No/100ths U.S. Dollars) in your favor available by your draft at sight on us bearing the clause "Drawn under Citizens Business Bank Letter of Credit number 49-SB-4884 dated May 25, 2010" accompanied by:

- 1) This original Letter of Credit and any subsequent amendment(s).
- 2) A dated statement purportedly signed by a duly "Authorized Representative or Official" of the County of Riverside certifying that:
 - i. "The undersigned being a duly authorized representative or official of the County of Riverside hereby certifies that the draft which accompanies this statement has been prepared and is presented in accordance with the Indemnification Agreement dated May 25, 2010, between Kaiser Eagle Mountain, LLC and County of Riverside, (the "Agreement"), or
 - ii. "The undersigned being a duly authorized representative or official of the County of Riverside hereby represents and warrants that Kaiser Eagle Mountain, LLC has failed to provide an acceptable substitute Letter of Credit at least thirty (30) days prior to expiration of Citizens Business Bank Letter of Credit number 49-SB-4884."

Partial drawings are permitted.

May 25, 2010

Re: Irrevocable Standby Letter of Credit number 49-SB-4884

Page 2 of 2

It is a condition of this Letter of Credit that it shall remain in full force and effect for a period of five (5) years from the date hereof and shall automatically renew itself for five (5) year periods thereafter unless and until we shall give at least one hundred twenty (120) days prior written notice to the County of Riverside and Kaiser Eagle Mountain, LLC, by courier service or overnight mail, that it elects not to renew Letter of Credit number 49-SB-4884 at the end of the five (5) year term then in effect. Upon receipt by you of such notice, you may draw hereunder, against your sight draft, the balance of this Letter of Credit within its then current validity.

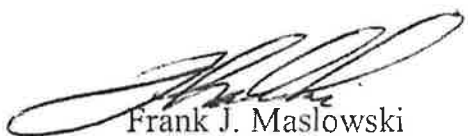
This Letter of Credit may be terminated at any time by the County upon return of this original Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking, and such terms shall not be modified, amended or amplified by any document, instrument or agreement referred to in this Letter of Credit, in which this Letter of Credit is referred to or to which this Letter of Credit relates.

We hereby undertake with you that the draft and required documents drawn in strict compliance with the terms of this Letter of Credit will be duly honored by us if presented along with the original Letter of Credit to this office prior to 3:00 p.m. on or before May 31, 2015 or an automatic extension hereof.

This Letter of Credit shall be governed by the laws of the State of California, and any litigation involving this Letter of Credit shall be brought in the courts of that State. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce No. 600.

Sincerely,



Frank J. Maslowski
Vice President/Manager
International Services