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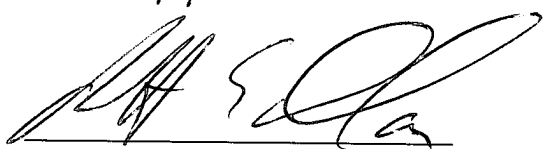
BEFORE THE STATE OF NEVADA,
STATE ENVIRONMENTAL COMMISSION

In Re:)
)
Appeal of Class 1 Air Quality Operating)
Permit to Construct: Permit No. AP4953-2525)
Jungo Land & Investment, Inc.)

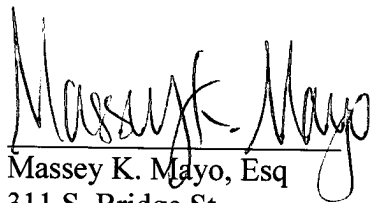
APPELLANTS' REPLY TO JUNGO'S and NDEP'S BRIEF, and
OPPOSITION TO JUNGO'S MOTION TO DISMISS

COMES NOW, the Appellants, Robert E. Dolan, and Massey K. Mayo, and in
connection with the above stated matter, respectfully submits this REPLY TO JUNGO'S and
NDEP's BRIEF, and also OPPOSES JUNGO'S MOTION TO DISMISS.

Dated this 17th day of May, 2010.



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POINTS AND AUTHORITIES

1) The main point of appellants appeal is that NDEP was presented with inaccurate and misleading information by Jungo in its application for the air permit. Unfortunately appellant's (in its First Supplement to its Brief) mistakenly called appendix H to the air permit application, exhibit H. In any case, appendix H, is full of inaccurate and misleading material information which undermines the integrity of the air permit and the actions of NDEP. This will be demonstrated by and through the testimony of Dr. Austin.

2) Jungo's Brief and Motion to Dismiss raises a few issues. They include, without limitation, the following;

- A) Standing;
- B) Whether Jungo has notice of appellant's reasons for the appeal;
- C) Whether the undeveloped BLM land that surrounds the landfill site has "no established uses";
- D) Whether Jim French and Dr. Austin can testify;
- E) Whether Jungo's dust control plan is the "best practical method"

3) **STANDING:** Dolan and Mayo duly submitted a written request to NDEP for a public hearing as regards the then proposed air quality permit, appeared at the public hearing, expressed their opposition to the aforesaid proposed permit, and had their questions responded to in writing by the NDEP in connection with the air quality permit issued herein, and duly filed an appeal from the issuance of said permit. Dolan and Mayo have used the land abutting the landfill site many times in the past and have a direct interest in the aforesaid land and are aggrieved by the decision of the NDEP.

Indeed, the statute authorizing an appeal herein does not limit the meaning of aggrieved as suggested by Jungo.

4) Meanwhile the NDEP in its brief argues that as regards the language used by the appellants in its First Amended Brief to describe the "stay" of the Humboldt County Commissioner's decision to not extend the CUP and its effectiveness as being "up in the air" as a misrepresentation, the following is offered: NRCP 65 states that:

"No restraining Order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof."

See exhibit "A" which is a copy of said "Stay" order and there is no security required or any good cause set out in the order for the failure of the security to be provided. Appellant's had intended on making an issue of this defect but said case was removed to federal court prior to the appellant's even knowing of the Ex-Parte Order. In any case, the undersigned have serious questions about the legality of the stay in question and still assert that the effectiveness of the CUP is an unresolved issue to be decided another day.

1 5) Jungo argues that there is "no established uses" on the BLM land which surrounds the
2 landfill site. This is not true. 43 CFR 2932.14 (a) establishes the right of the public to use BLM
land for recreation purposes, such as to hunt, trap or fish.

3 If you hold a valid State license, you do not need a Special Recreation Permit to hunt, trap, or
4 fish. You must comply with State license requirements for these activities. BLM Special
5 Recreation Permits do not alone authorize you to hunt, trap, or fish. However, you must have a
Special Recreation Permit if BLM requires one for recreational use of a special area where you
6 wish to hunt, trap, or fish. 43 CFR 2932.14 (a)

7 Moreover, BLM land allows for hiking and camping for not more than 14 days without permit.

8 6) NDEP has not complied with the law. It's finding that the dust control plan is somehow
9 "consistent with those accepted in the regulatory field" (quoting from Jungo's brief, p.2:12-14)
10 was an abuse of discretion and clearly erroneous in light of the testimony of and by Dr. Austin.
She will tell this SEC that, among other things, the data submitted to the NDEP by Jungo was
11 unreliable and substantially inaccurate.

12 7) Meanwhile the administrative code provision cited to by Jungo (NAC 445B.318 (3)) is
13 just an administrative code, and not a statute enacted by the legislature and signed by the
Governor. It must be read together with the stated policy of the State as expressed in the statutes.
14 Said policy is to protect the health, welfare and safety of the citizens of Nevada, and the wildlife.

15 WHEREFORE THE undersigned pray that the motion to dismiss be denied, and the hearing be
held on the appeal herein, and that the permit be denied to Jungo.

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19 Robert E. Dolan

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Massey K. Mayo

EXHIBIT A

EXHIBIT A

1 CASE NO. CV18226
2 DEPT. NO. 2

FILED

2010 APR 29 PM 3:02

TAMARA SPERO
DIST. COURT CLERK

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6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF HUMBOLDT

8
9 JUNGO LAND & INVESTMENTS, INC. a
10 Nevada corporation,

11 Plaintiff-Petitioner,

12 vs.

13 HUMBOLDT COUNTY BOARD OF
14 COUNTY COMMISSIONERS and
15 HUMBOLDT COUNTY, a political
16 subdivision of the State of Nevada, CHUCK
17 GIORDANO, in his individual and official
18 capacity as Humboldt County Commissioner,
19 MIKE BELL, in his individual and official
20 capacity as Humboldt County Commissioner,
21 DAN CASSINELLI, in his individual and
22 official capacity as Humboldt County
23 Commissioner, GARLEY AMOS, in his
24 individual and official capacity as Humboldt
25 County Commissioner, TOM FRANSWAY, in
26 his individual and official capacity as
27 Humboldt County Commissioner

28 Defendants-Respondents

**ORDER GRANTING JUNGO LAND &
INVESTMENTS, INC.'S EMERGENCY
EX PARTE MOTION FOR TEMPORARY
STAY**

29 Plaintiff-Petitioner Jungo Land & Investments, Inc. ("Jungo") filed its Emergency Ex
30 Parte Motion for Temporary Stay Pending Determination of Jungo's Motion for Stay Pending
31 Judicial Review.

32 For good cause, it is hereby ORDERED and ADJUDGED that Jungo's Emergency Ex
33 Parte Motion for Temporary Stay is GRANTED without bond or other security effective as of
34 April 5, 2010. Enforcement of the Humboldt County Board of County Commissioners' decision

MCDONALD-CARANO-WILSON
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1 to reverse the Humboldt County Regional Planning Commission's 5-year extension of Jungo's
2 Conditional Use Permit is hereby stayed pending this Court's decision on Jungo's permanent
3 Motion for Stay Pending Judicial Review. This Order shall be served on
4 Defendants/Respondents by April 30, 2010 and the parties shall thereafter set a briefing
5 schedule and a hearing date on the permanent Motion for Stay.

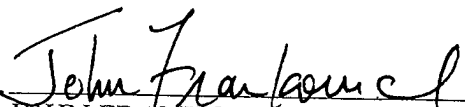
6 Dated: 29 April 2010.

7
8 
9 DISTRICT COURT JUDGE

10 Submitted by:

11 McDONALD CARANO WILSON LLP

12
13 By:


14 JOHN FRANKOVICH
15 DEBBIE LEONARD
16 100 West Liberty Street, 10th Floor
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20 Attorneys for Real Party in Interest
21 JUNGO LAND & INVESTMENTS, INC.
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CERTIFICATE OF SERVICE

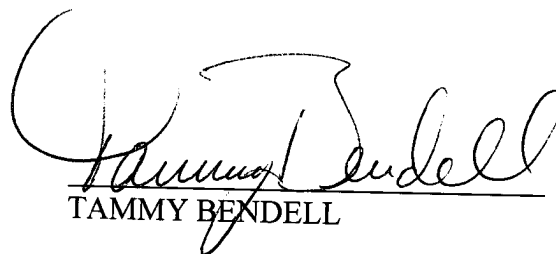
I hereby certify that on this 19th day of May, 2010, pursuant to NRCP 5(b), I have deposited, as stated below, at Winnemucca, Nevada, a true and correct copy of the APPELLANT'S OPPOSITION TO JUNGO'S AND NDEP'S BRIEF BEFORE and OPPOSITION TO MOTION TO DISMISS, addressed to the following:

Philip Jacka
P.O. Box 851
Winnemucca, NV 89446

John Frankovich, Esq. - Email
Debbie Leonard, Esq.
McDonald Carano Wilson
100 W. Liberty St., 10th Floor
Reno, Nevada 89501

Nhu Nguyen - Email
Office of Attorney General
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Carson City, NV 89701

- First Class U.S. Mail
- Via Fax Transmission
- Box in District Court Clerk Office
- Box in Justice Court Clerk Office
- Hand Delivered


TAMMY BENDELL