

1 JOHN FRANKOVICH (NV Bar. No. 667)  
jfrankovich@mcdonaldcarano.com  
2 DEBBIE LEONARD (NV Bar. No. 8260)  
dleonard@mcdonaldcarano.com  
3 McDONALD CARANO WILSON LLP  
100 West Liberty Street, 10th Floor  
4 Reno, NV 89501  
(775) 788-2000 (phone)  
5 (775) 788-2020 (fax)

6 Attorneys for Intervenor and Real Party in Interest  
Jungo Land & Investments, Inc.  
7

8 BEFORE THE STATE OF NEVADA  
9 STATE ENVIRONMENTAL COMMISSION  
10

11 In re

12 APPEAL OF CLASS I AIR QUALITY  
OPERATING PERMIT TO CONSTRUCT:  
13 PERMIT NO. AP4953-2525  
JUNGO LAND & INVESTMENTS, INC.  
14 \_\_\_\_\_ /

**JUNGO LAND & INVESTMENTS, INC.'S  
RESPONDING BRIEF  
AND  
MOTION TO DISMISS**

15  
16 JUNGO LAND & INVESTMENTS, INC. (“Jungo”), by and through counsel of record  
17 McDonald Carano Wilson LLP, submits its Response to Appellants’ Opening Statement and  
18 moves to dismiss Appellants’ appeals because Appellants lack standing to appeal, have failed to  
19 properly address the issues identified in the Commission’s order directing them to file briefs and  
20 have not raised any grounds for denying the Air Quality Operating Permit (“Permit”) granted to  
21 Jungo by the Nevada Division of Environmental Protection (“NDEP”) Bureau of Air Pollution  
22 Control (“BAPC”).

23 **INTRODUCTION**

24 In the instant appeal, Appellants Robert Dolan, Massey Mayo and Phil Jacka continue to  
25 perpetuate their ongoing campaign to obstruct and interfere with Jungo’s development of a state-  
26 of-the-art municipal solid waste landfill in Humboldt County. For the last year, Appellants have  
27 initiated unauthorized proceedings, including a lawsuit, against Jungo, injected themselves into  
28 Jungo’s permitting process and have generally sought to inflame public emotions based upon

 MCDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

1 baseless and unsubstantiated allegations. At no point during Appellants' crusade to undermine  
2 the Jungo project have they ever identified a single legitimate or factually-based issue to  
3 substantiate their inflammatory allegations. Similarly, here, Appellants have failed to identify  
4 any basis for reversing NDEP's action to issue Jungo's Permit. Moreover, Appellants live over  
5 25 miles from the Jungo site and have no personal or property right that is implicated by the  
6 Jungo project and therefore lack any legal standing to mount their appeals.

7 Appellants ask the Commission to hold Jungo to different standards than all other  
8 applicants and operators of municipal solid waste landfills in Nevada. As NDEP correctly  
9 concluded, Jungo had met all the regulatory requirements to receive a Class I Air Quality  
10 Operating Permit, as set forth in NAC 445B.3361 et seq. Jungo has designed a landfill gas  
11 collection and treatment system that will control emissions of non-methane organic compounds  
12 ("NMOC"), as required by the pertinent regulations. Moreover, Jungo has met the requirements  
13 for presenting a dust control plan that sets forth control methods consistent with those accepted in  
14 the regulatory field. None of the Appellants has alleged a failure to comply with the  
15 Commission's regulations for a Class I Operating Permit or alleged any ground which, if proven,  
16 would support the reversal of NDEP's issuance of the Permit. For these reasons, the appeals  
17 should be dismissed.

18 **STATEMENT OF ISSUES**

19 Did NDEP correctly issue to Jungo a Class I Air Quality Operating Permit to Construct  
20 where Jungo's application satisfied all of the regulatory requirements?

21 **STATEMENT OF FACTS**

22 Jungo is a Nevada corporation and the holder of a Conditional Use Permit granted by  
23 Humboldt County on or about April 23, 2007, # UH-07-05 ("CUP"), to construct and operate a  
24 municipal solid waste landfill in Humboldt County, Nevada. Jungo has a leasehold interest, with  
25 an option to purchase, the real property upon which the proposed landfill will be constructed,  
26 identified as Sec. 7, T35N, R33E, approximately 25 miles west of Winnemucca, Nevada  
27 ("Property"). Jungo is a wholly-owned subsidiary of Recology Nevada, Inc., a Nevada  
28 corporation, formerly known as Norcal Waste Systems of Nevada, Inc. Recology Nevada, Inc. is

1 a wholly-owned subsidiary of Recology, Inc., a California corporation. Recology, Inc. and its  
2 subsidiaries are in the business of providing solid waste services to communities in California,  
3 Oregon and Nevada. These services include residential and commercial recycling, materials  
4 recovery, construction and demolition debris recycling, large-scale composting of food scraps and  
5 organic waste, compost sales, waste collection, transfer, disposal and landfill operations, planning  
6 and administration.

7 On March 20, 2007, Jungo filed an application for a conditional use permit with the  
8 Humboldt County Regional Planning Department to operate a municipal solid waste landfill (“the  
9 Project”) on private property located approximately 25 miles west of Winnemucca (“the  
10 Property”). Humboldt County Planning Department staff independently reviewed Jungo’s  
11 application and prepared a detailed Staff Report, including specific findings recommending  
12 approval. On April 12, 2007, the Planning Commission held a properly-noticed public hearing to  
13 review and evaluate the impacts of the Project and to hear from the public whether there were any  
14 concerns or issues that should be mitigated. Appellants Dolan, Mayo and Jacka did not attend or  
15 otherwise participate in the April 12, 2007 hearing on Jungo’s CUP application.

16 The Planning Commission unanimously voted to issue the CUP subject to certain  
17 conditions, which included the requirement that Jungo obtain all necessary local, state and federal  
18 permits and licenses relating to the Project. Jungo’s CUP, # UH-07-05, was never appealed to the  
19 Humboldt County Board of County Commissioners (“BCC”) by Appellants or anyone else.  
20 Pursuant to Humboldt County Code § 17.68.070, Jungo’s CUP became final on or about April 26,  
21 2007. The CUP had a three-year term, which was subject to extension from the Planning  
22 Commission.

23 On or about October 15, 2007, the BCC unanimously approved an amendment to the  
24 Humboldt County Solid Waste Ordinance (“Amendment”) that specifically authorized receipt of  
25 municipal waste from outside of Humboldt County and authorized additional landfills within  
26 Humboldt County other than the existing Humboldt County Regional Landfill. Although the  
27 plain language of the Humboldt County Code did not preclude the development of additional  
28 landfills in the County (and any such prohibition would have violated state and federal law),

1 Humboldt County took the position that the Amendment was necessary to allow the Jungo Project  
2 to proceed. The BCC took action to amend the solid waste ordinance with the specific intention  
3 of furthering the Jungo Project. There was no public opposition to the Amendment.

4           Thereafter, Jungo proceeded in good faith reliance on the County's issuance of the CUP to  
5 diligently satisfy the conditions thereof. Consistent with those efforts, on January 8, 2009, Jungo  
6 filed an application to the Nevada Division of Environmental Protection's ("NDEP") Bureau of  
7 Air Pollution Control for a Class I Air Quality Permit ("Permit"). On May 22, 2009, NDEP  
8 completed its review of Jungo's Permit application and issued notice of its intent to issue same, as  
9 proposed in the draft permit made available by NDEP. At that time, NDEP had completed its  
10 internal review of Jungo's application, including all technical evaluation, found the application in  
11 compliance with all applicable laws and regulations, and was prepared to issue Jungo's Air  
12 Quality Permit.

13           At the request of Humboldt County, NDEP held a public hearing on August 19, 2009 in  
14 Winnemucca, Nevada on the proposed Permit and accepted public comments. NDEP approved  
15 Jungo's Air Quality Permit on March 5, 2010. This appeal followed.

16           Starting in approximately June 2009, which was over two years after Jungo's CUP was  
17 issued, Appellants initiated a campaign to obstruct Jungo's ability to satisfy the conditions of the  
18 CUP and interfere with Jungo's development of the Project. Appellants' efforts included their  
19 inflammatory participation in NDEP's August 19, 2009 public hearing, in which they lodged  
20 verbal attacks upon NDEP staff and Jungo representatives. Additionally, Appellants brought two  
21 unauthorized petitions to revoke Jungo's CUP, which were both rejected by the Planning  
22 Commission and the BCC. During the public meetings on these matters, Appellants again  
23 resorted to verbal attacks and incendiary comments designed to incite public opposition to the  
24 Jungo Project and did not present any legitimate factual or legal basis for revoking Jungo's CUP.  
25 Notwithstanding that they lacked any legal standing to appeal, Appellants Dolan and Mayo  
26 thereafter filed a petition for judicial review in the Sixth Judicial District Court of Nevada. That  
27 lawsuit is still pending.

28 ///

1 On February 11, 2010, the Humboldt County Regional Planning Commission granted to  
2 Jungo a 5-year extension of the CUP. Neither the Humboldt County Code nor Jungo’s CUP  
3 provided for review of the Planning Commission’s extension by the BCC. Nevertheless,  
4 Appellants Dolan and Mayo filed a document purporting to appeal the Planning Commission’s  
5 decision to grant the extension to the BCC.

6 On April 5, 2010, over the objection of Jungo, the BCC heard the appeal. In a proceeding  
7 fraught with Open Meeting Law, due process and other constitutional violations, the BCC  
8 purported to vote to deny the extension to Jungo’s CUP. Thereafter, Jungo filed suit in the Sixth  
9 Judicial District Court of Nevada. On April 29, 2010, the Honorable Robert E. Estes issued an  
10 order staying enforcement of the BCC decision reversing the Planning Commission’s five-year  
11 extension, a copy of which is attached hereto as Exhibit I-1. As a result, Jungo’s CUP is in full  
12 force and effect, and the status of Jungo’s CUP has no bearing on the instant proceeding before  
13 the Commission.

14 The instant appeals are just one more in a long line of obstructionist actions taken by  
15 Appellants to interfere with Jungo’s permitting process. As they have done throughout their  
16 campaign, Appellants assail NDEP as not protecting the public welfare. (Appeal at p. 4). In fact,  
17 Appellants go so far as to compare the staff of BAPC to convicted swindler Bernie Madoff based  
18 upon Appellants’ unsupported contentions that BAPC has a “see nothing, do nothing, understand  
19 nothing, bureaucratic mentality.” (Id.). These attacks demonstrate that the goal of Appellants is  
20 not to legitimately challenge any legal or factual underpinnings of Jungo’s Permit. Rather,  
21 Appellants seek only to inflame public emotion without any grounding in the facts or the law.  
22 For the reasons set forth herein, Appellants’ appeals should be dismissed.

23 **ARGUMENT**

24 **A. Appellants Lack Standing to Bring this Appeal**

25 The Commission is without authority to hear Appellants’ appeal because the Appellants  
26 are not “aggrieved” parties, as required by Nevada law, with standing to appeal the issuance of  
27 Jungo’s Permit. Standing is a threshold jurisdictional requirement that the Appellants must  
28 satisfy before the Commission can consider their appeal. City of North Las Vegas v. Eighth Jud.

1 Dist. Ct., 122 Nev. 1197, 1207, 147 P.3d 1109, 1117-18 (2006). It is therefore the burden of the  
2 parties appealing to the Commission to prove that they have standing. See id. The Appellants  
3 have made no effort to meet this burden or demonstrate to the Commission that they have  
4 standing.

5 Under the Nevada Revised Statutes, only an “aggrieved” person has standing to appeal to  
6 the Commission the issuance of a permit by NDEP. NRS 445B.340, 445B.360. The statute itself  
7 does not define “aggrieved.” See id. Nevada law is very particular, however, as to the meaning  
8 of “aggrieved” for the purposes of standing to bring an appeal. Kay v. Nunez, 122 Nev. 1100,  
9 1106, 146 P.3d 801, 805 (2006). According to the Nevada Supreme Court, a party is considered  
10 “aggrieved” “for general appellate purposes” when either a “personal or property right has been  
11 adversely and substantially affected” by a ruling. Id.; Las Vegas Police Protective Ass’n Metro.  
12 Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark, 122 Nev. 230, 130 P.3d 182, 189  
13 (2006). This general appellate definition of aggrieved applies to administrative appeals under  
14 statutes that do not otherwise define the term. See, e.g., Dickinson v. Am. Med. Response, 124  
15 Nev. \_\_\_, 186 P.3d 878, 882-83 n.12 (2008). By limiting appeals to persons with a cognizable legal  
16 interest, the Nevada Legislature has ensured that appellants establish standing by “show[ing] that  
17 they have suffered special or peculiar damages differing in kind from the general public.” L & T  
18 Corp. v. Henderson, 98 Nev. 501, 504, 654 P.2d 1015, 1016-1017 (1982) (internal quotation  
19 omitted).

20 Here, Appellants have failed to identify a personal or property right that is adversely and  
21 substantially affected by Jungo’s permit because no such right exists. According to information  
22 provided in their appeals, the Appellants live in Winnemucca, over 25 miles away from the  
23 landfill site. None of the Appellants owns adjoining property or any property in the vicinity of  
24 the landfill site. The site is surrounded by undeveloped BLM land, which has no established uses.

25 Moreover, the only air pollutant regulated for landfill projects like Jungo’s is NMOC,  
26 which will be captured below the surface of the landfill before it can ever be emitted into the  
27 atmosphere. It defies logic to suggest that Appellants might be substantially and adversely  
28 affected by something that, through a complex collection and control system, will not be emitted,

1 much less travel over 25 miles to Winnemucca. Moreover, since Jungo’s permit prohibits any  
2 fugitive dust from leaving the property, Appellants cannot establish standing through their  
3 speculation that such fugitive dust might be emitted. If Jungo cannot allow dust to leave  
4 disturbed areas of the landfill site, Appellants cannot be deemed to be substantially and adversely  
5 affected in Winnemucca by on-site activities. To the extent that Appellants can show any interest  
6 (which Jungo refutes), their interest is no different than that of any member of the public.

7 This is not a situation such as the Ponderosa Dairy appeal to the Commission where the  
8 permit issued by NDEP allowed the discharge of pollutants into groundwater and surface water  
9 via land application, irrigation, and stormwater runoff. To the contrary, Jungo’s air permit  
10 requires that Jungo capture NMOC—the only regulated pollutant for landfills—within the landfill  
11 itself so that the NMOC is not emitted into the atmosphere. Likewise, where the appellants in the  
12 Ponderosa Dairy appeal lived within the same groundwater basin that contained the receiving  
13 waters from Ponderosa Dairy and within a few miles of the discharge location, Appellants here  
14 live over 25 miles away.

15 Had the Nevada Legislature intended persons such as Appellants to have standing, it  
16 would have simply stated in the statute that **any** person could bring an appeal to the Commission.  
17 If Appellants have standing, then someone in Las Vegas, New York or even Shanghai would have  
18 standing to challenge the issuance of Jungo’s air permit. To prevent this absurd result, the  
19 Legislature included the language “aggrieved” in the statute in order to limit the scope of people  
20 who have standing to bring an appeal. In the absence of a cognizable legal interest that could  
21 confer standing upon Appellants, the Commission lacks authority to even consider their appeals.  
22 See City of North Las Vegas v. Eighth Jud. Dist. Ct., 122 Nev. 1197, 1209, 147 P.3d 1109, 1117-  
23 18 (2006). Jungo therefore requests that the appeals be dismissed.

24 **B. Appellants’ Appeal Should Be Dismissed for Failure to Follow the Order of the**  
25 **Commission and Identify Any Legal or Factual Basis that Warrants Denial of**  
**Jungo’s Air Permit**

26 In order to identify the particular basis for Appellants’ appeals, on April 13, 2010, the  
27 Commission entered an Order Regarding Briefing Schedule in response to NDEP’s request.  
28 Specifically, the Commission ordered that **each** appellant file a brief with the SEC which

Ⓜ  
MCDONALD·CARANO·WILSON<sup>3</sup>  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

1 contained: “a detailed statement of the issue(s) to be raised during the hearing, including facts and  
2 legal authorities that the appellant alleges NDEP violated in granting Permit No. AP4953-2525...”  
3 The purpose for the Commission’s order directing briefing was to require Appellants to provide  
4 clarity to the vague and conclusory allegations contained in their appeals and identify the specific  
5 and legitimate issues and contentions that form the basis of their appeals. See id.

6 The Appellants have not followed the directives of the Commission’s order. Appellant  
7 Jacka never filed an Opening Brief, and on this basis alone, his appeal should be dismissed. The  
8 Opening Brief of Appellants Dolan and Mayo does not provide any clarification of the facts or  
9 legal basis of their appeal. To the contrary, they have simply attached the same vague and  
10 conclusory appeals that prompted the Commission to order briefing in the first instance.

11 Moreover, the appeals do not identify any facts that warrant the reversal of NDEP’s action  
12 to issue Jungo’s Permit. Rather, Dolan and Mayo cite to inapplicable regulations, regurgitate  
13 irrelevant arguments and raise issues that have no bearing until the Jungo Landfill becomes  
14 operational. As a result, Jungo and NDEP have no notice regarding the substance of Appellants’  
15 claims. For this reason as well, the appeals should be dismissed.

16 **C. Since Jungo Met All Statutory and Regulatory Requirements, NDEP Properly**  
17 **Issued the Permit**

18 Because Jungo’s application demonstrated an adequate system for the collection and  
19 control of landfill gas and set forth a dust control plan to prevent fugitive dust, NDEP properly  
20 adhered to its regulatory mandate to issue Jungo’s Permit. If the regulatory requirements are met  
21 by the applicant, the issuance of the permit is mandatory:

22 An operating permit **must be granted** if the Director finds from a stack  
23 emission test or other appropriate test and other relevant information that use of  
24 the stationary source will not result in any violation of the air quality regulations  
25 or the provisions of 40 C.F.R. § 52.21 or 40 C.F.R. Parts 60, 61 and 63, adopted  
26 by reference in NAC 445B.221.  
27 NAC 445B.318(3) (emphasis added). The general requirements for an air quality operating  
28 permit for a municipal solid waste landfill such as the Jungo Project are found at 40 C.F.R. Part  
60, subpart WWW, as adopted in Nevada pursuant to NAC 445B.221(5)(c). Where all regulatory  
requirements are satisfied, the public policies set forth in NRS 445B.100 are achieved.

1           **1. Jungo’s Plan to Collect and Control NMOC Meets the Necessary Standards**

2           NDEP properly issued Jungo’s Permit because Jungo’s application sufficiently set forth  
3 the design plan to collect and control landfill gas, or NMOC, which is the only regulated air  
4 pollutant for municipal solid waste landfills. See 40 C.F.R. § 60.33c. The federal regulations, as  
5 adopted in Nevada, require that an applicant who seeks to construct a solid waste landfill submit a  
6 collection and control system design plan for landfill gas in accordance with the certain  
7 specifications. 40 C.F.R. § 60.752. The collected landfill gas must then be flared, routed to a  
8 controlled combustible device or processed for subsequent sale or use. 40 C.F.R. §  
9 60.752(b)(2)(iii)(A-C). The regulations contain sampling procedures and a specific equation for  
10 calculating concentrations, based upon measurements taken by surface probes or within the gas  
11 collection system. 40 C.F.R. § 60.754.

12           The maximum expected landfill gas generation flow rate is also calculated from one of the  
13 equations set forth in the regulations. 40 C.F.R. § 60.755. Which equation is used depends upon  
14 whether the annual acceptance rate of solid waste is projected—such as for a proposed facility—  
15 or known—such as for an existing facility. Id. For the purposes of calculating NMOC, Nevada  
16 accepts projections calculated using the Landfill Gas Emissions Model (“LandGem”) developed  
17 by the United States Environmental Protection Agency (“EPA”). See  
18 <http://www.epa.gov/ttnecat1/dir1/landgem-v302-guide.pdf>. LandGem is used nationwide for the  
19 purposes of determining whether a proposed landfill gas collection and control system is adequate  
20 to control NMOC emissions for the amount of waste accepted for disposal in the landfill. Id.

21           Here, Jungo’s application set forth the maximum design capacity and requested operating  
22 rate. Jungo also presented the LandGem model results based upon the projected volume of waste.  
23 The Report of Design attached to Jungo’s application sets forth the landfill gas control system.  
24 (p. 15). As explained in the Report of Design, Jungo initially plans to dispose of landfill gas with  
25 flares until such time as sufficient gas is generated to feasibly produce electricity. (Id.). Jungo  
26 also presented its Monitoring Plan, which includes provisions for landfill gas monitoring  
27 consistent with the regulatory requirements. (p. 10). The diagrams submitted with Jungo’s  
28 application laid out the landfill gas monitoring network, the landfill gas monitoring probe detail,



1 the locations of gas collection pipes, a cross section showing gas collection piping detail and a  
2 preliminary gas collection plan. Based upon all of the information submitted by Jungo, NDEP  
3 correctly determined that Jungo had satisfied all of the regulatory requirements and issued  
4 Jungo's permit.

5 **2. Jungo's Dust Control Plan Adequately Meets the Necessary Standards**

6 Similarly, NDEP also properly accepted Jungo's proposed dust control plan as sufficient  
7 to meet the regulatory requirements. Nevada's regulation requires a permittee to put into effect  
8 an ongoing program using the best practical methods to prevent particulate matter from becoming  
9 airborne as a result of the permittee's construction or site operations. NAC 445B.22037. "Best  
10 practical methods" includes, but is not limited to, paving, chemical stabilization, watering, phased  
11 construction and revegetation. Id. NDEP recognizes the distinction between anthropogenic  
12 versus natural sources of dust. See Western Regional Air Partnership Fugitive Dust Handbook,  
13 available at <http://ndep.nv.gov/baqp/planmodeling/fugitivedust.html>. A permittee need only  
14 employ such dust control measures as are necessary to actually control fugitive dust caused by  
15 anthropogenic surface disturbances. See id.

16 Here, the dust control plan submitted by Jungo included the use of water trucks to spray  
17 water on disturbed areas on a regular basis, posting and limiting vehicle speeds to 10-15 miles per  
18 hour and fencing or berming to prevent unauthorized access to disturbed areas. Jungo's design  
19 and operations plans also show that Jungo will revegetate each landfill cell as it is completed.  
20 Additionally, Jungo's witness Tim Daleiden will testify at the hearing regarding Recology's  
21 experience with landfill operations in wind-prone areas, the limited working surface of  
22 Recology's operations at any given time, revegetation and standard dust control practices, which  
23 include training employees regarding dust control practices, altering operations, as necessary,  
24 during high-wind events and employing such other practices as are necessary to prevent fugitive  
25 dust arising from site activities.

26 As the Commission has recognized, control of dust is an enforcement issue and is not  
27 relevant to issuance of Jungo's permit in the first instance. See State Env'tl. Comm'n v. John  
28 Lawrence Nev., Inc., 108 Nev. 431, 834 P.2d 408 (1992); see also In re Appeal of Revised Class

1 II Air Quality Operating Permit: Bango Oil LLC, Permit No. AP2992-1473, Order Granting  
2 Motion for Summary Judgment (recognizing odor as an enforcement issue not relevant to permit  
3 revision). Appellants' appeals erroneously speculate and presume dust control violations before  
4 construction and operations have even commenced. This is simply not fair. Based upon  
5 Recology's considerable experience in constructing and operating landfills in wind-prone areas,  
6 Jungo is in the best position to determine what steps need to be taken to control fugitive dust.  
7 Should NDEP and/or Jungo determine that Jungo's dust control measures are inadequate to  
8 control fugitive dust, however, other methods can be employed at that time. Because Nevada's  
9 regulations do not require permittees to employ all available dust control methods but rather just  
10 those that are necessary to prevent fugitive dust emissions from areas disturbed by Jungo's  
11 operations, NDEP correctly issued Jungo's permit, subject to the dust control plan presented by  
12 Jungo.<sup>1</sup>

13 **D. The State of Nevada Must Hold All Applicants to the Same Standards**

14 Appellants essentially are asking the Commission and NDEP to impose additional  
15 requirements on Jungo that are not found in the laws or regulations that govern municipal solid  
16 waste landfills. Nevada law is clear that NDEP must issue an air quality permit where the  
17 applicant has met all regulatory requirements. NAC 445B.318(3). The very purpose of having a  
18 regulatory framework for air pollution control is to ensure uniformity among all similarly-situated  
19 applicants. As such, Jungo can be held to no different standard than other operators of municipal  
20 solid waste landfills in Nevada. Appellants' request to the Commission to single out Jungo for  
21 additional scrutiny and stricter regulatory requirements is unlawful and unfair.

22 As EPA's regulations dictate, all proposed municipal solid waste landfills in Nevada  
23 seeking a Class I permit must provide an estimate of NMOC flow rates based upon volume of  
24 waste deposited. The LandGem model is the accepted methodology for satisfying the regulatory  
25

---

26 <sup>1</sup> In their Supplemental Brief, Appellants refer to an "Exhibit H" that Jungo purportedly submitted  
27 to NDEP. There is no Exhibit H to Jungo's air permit application, so Jungo is not clear what  
28 document Appellants reference. Since no "Exhibit H" was presented as part of Jungo's air permit  
application or considered by BPAC in granting Jungo's air permit, whatever "Exhibit H" is, it is  
irrelevant to the matter now before the Commission.

1 requirements. If LandGem is acceptable for every other applicant, it must likewise be accepted  
2 for Jungo.

3 Likewise, every applicant seeking to disturb soils in Nevada must employ dust control  
4 practices. NDEP does not dictate which dust control methodologies an applicant must employ. It  
5 is up to the applicant to prevent fugitive dust using their chosen methodology. Only if that is  
6 ineffective must additional measures be employed. NDEP cannot hold Jungo to any different  
7 standard.

8 Appellants' appeal challenges the entire Nevada regulatory scheme as violating "U.S.  
9 Constitutional provisions, State Policy and common sense." (Appeal at p. 4). To the extent that  
10 Appellants do not like Nevada's laws, however, they must present their complaints to Nevada's  
11 Legislature and to this Commission when it is sitting in its rulemaking capacity. Appellants'  
12 request that the Commission employ an ad-hoc regulatory scheme for a single applicant must be  
13 rejected.

14 **E. Jungo's Proposed Witness List**

15 Because Appellants have failed to file an Opening Brief that narrows the issues for appeal,  
16 Jungo provides the following list of potential witnesses to ensure that all issues raised by  
17 Appellants in their appeals can be adequately addressed by Jungo at the Commission's hearing:

- 18 1. Tim Daleiden, Engineering Manager, Recology Environmental Solutions
- 19 2. Gay McCleary, Air Permitting Specialist, ECON, Inc.
- 20 3. Ken Haskell, Golder Associates
- 21 4. Amy Ha, Golder Associates
- 22 5. Erin Merrill, Recology, Inc.
- 23 6. Robert E. Dolan
- 24 7. Massey K. Mayo
- 25 8. Philip Jacka
- 26 9. Mike Elges, NDEP

27 Jungo also reserves the right to cross examine all witnesses called by Appellants.

28 ///

 MCDONALD·CARANO·WILSON<sup>3</sup>  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

1 **F. Objection to Appellants' Witnesses**

2 Jungo objects to the witnesses identified by Appellants on the basis that they lack the  
3 qualifications to opine on the matters before the Commission and their proposed testimony is  
4 irrelevant. Under Nevada law, expert testimony is not admissible unless "scientific, technical or  
5 other specialized knowledge will assist the trier of fact to understand the evidence or to determine  
6 a fact in issue." NRS 50.275. Neither Mr. French nor Ms. Austin has any identified expertise in  
7 the control of landfill gas or fugitive dust, the only two regulatory issues involved in Jungo's  
8 Permit. Likewise, Ms. Austin's purported expertise in climate is irrelevant to Jungo's Permit.  
9 The testimony of these individuals, therefore, seeks only to obstruct a properly-issued permit and  
10 hold Jungo to a different standard than other applicants. Because Appellants' proposed witnesses  
11 are not qualified as experts in the matters before the Commission and have no expertise that  
12 would assist the Commission in reviewing NDEP's issuance of Jungo's Permit, their testimony  
13 should be excluded.

14 **CONCLUSION**

15 Appellants lack any cognizable legal interest that gives them standing to bring this appeal.  
16 They also have failed to identify any legal or factual basis that would warrant reversing NDEP's  
17 issuance of Jungo's Permit. Rather, Appellants seek only to perpetuate their campaign to incite  
18 public emotion based upon conclusory allegations, unsupported assertions and flawed legal  
19 analysis.

20 Because Nevada's statutory and regulatory framework is designed to ensure that all  
21 applicants are held to the same standards, the Commission must reject Appellants' request to  
22 burden Jungo with a host of requirements that are not based in law. NDEP correctly reviewed  
23 Jungo's application to conclude that Jungo had satisfied all regulatory requirements. Therefore,  
24 NDEP had a mandatory obligation to issue Jungo's Permit. For these reasons, Appellants'  
25 appeals must be dismissed, and NDEP's issuance of Jungo's Permit should be affirmed.

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Dated: May 12, 2010

McDonald Carano Wilson LLP



JOHN FRANKOVICH  
DEBBIE LEONARD  
100 West Liberty Street, 10th Floor  
P.O. Box 2670  
Reno, NV 89505-2670  
(775) 788-2000

Attorneys for Real Party in Interest  
JUNGO LAND & INVESTMENTS, INC.

283858\*

 MCDONALD·CARANO·WILSON  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

Exhibit I-1

Exhibit I-1

FILED

2010 APR 29 PM 3:02

TAMI RAE SPERO  
DIST. COURT CLERK

1 CASE NO. CV18226

2 DEPT. NO. 2

3  
4  
5  
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  
Nevada corporation,

10 Plaintiff-Petitioner,

11 vs.

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

20 Defendants-Respondents  
21 \_\_\_\_\_/

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

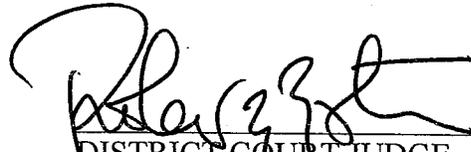
22  
23 Plaintiff-Petitioner Jungo Land & Investments, Inc. ("Jungo") filed its Emergency Ex  
24 Parte Motion for Temporary Stay Pending Determination of Jungo's Motion for Stay Pending  
25 Judicial Review.

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

McDONALD-CARANO-WILSON  
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

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

17 P.O. Box 2670

18 Reno, NV 89501

19 Telephone No. (775) 788-2000

20 Attorneys for Real Party in Interest  
21 JUNGO LAND & INVESTMENTS, INC.

22 282933-2

23  
24  
25  
26  
27  
28  
MCDONALD·CARANO·WILSON<sup>®</sup>

100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

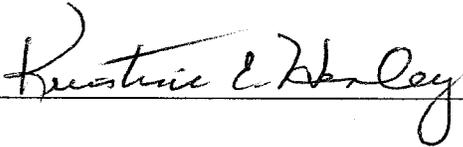
CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano Wilson LLP, and that on this 12th day of May, 2010, I provided a copy of the **JUNGO LAND & INVESTMENTS, INC.'S RESPONDING BRIEF AND MOTION TO DISMISS** via first-class United States mail, with a courtesy copy via Email, to the following:

Bob Dolan and Massey Mayo  
Dolan Law LLC  
311 S. Bridge Street, Suite E  
Winnemucca, Nevada 89445  
[bobdolanlaw@sbcglobal.net](mailto:bobdolanlaw@sbcglobal.net)  
[mmcbobdolanlaw@sbcglobal.net](mailto:mmcbobdolanlaw@sbcglobal.net)

Nhu Nguyen  
Attorney General's Office  
100 N. Carson Street  
Carson City, Nevada 89701  
[nnguyen@ag.nv.gov](mailto:nnguyen@ag.nv.gov)

Philip Jacka  
P.O. box 851  
Winnemucca, NV 89446  
[prjacka@netzero.net](mailto:prjacka@netzero.net)

  
\_\_\_\_\_

 MCDONALD·CARANO·WILSON  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-7000 • FAX 775-788-2020

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28