

Law Office of Rose M. Zoia

50 Old Courthouse Square, Suite 401
Santa Rosa, California 95404
707.526.5894 . fax 267.381.6097
rzoia@sbcglobal.net . zoialaw.com

November 10, 2011

via email and USPS

Kendall Smith, Chair, and Supervisor
Mendocino County Board of Supervisors
501 Low Gap Road, Room 1010
Ukiah, CA 95482

RE: North American Organics (Lowe)
Mendocino County File No. UR 49-85-2009
Board of Supervisors Hearing: November 1, 2011

Dear Chair Smith and Supervisors:

On behalf of neighbors and residents in the vicinity of the proposed above-referenced project, please accept these comments on the Negative Declaration (ND) and the proposed project.

The project request is for a Use Permit to establish a commercial dog kennel and breeding business and a Use Permit Renewal to allow for the continuing operation of the packaging, processing and sale of pre-composted materials and amendments as well as a modification to allow for the on-site composting of 3,000 tons of grape pomace per year. The request also includes alteration of previous conditions to allow the business to operate on Sundays and to reduce to 20 feet the established 100 foot buffer between stored materials and the northern property line, occupied by residents and vineyards.

The project site as well as the properties to the north and south are zoned Agriculture- 40 acre minimum and Flood Plain (AG 40 + FP) and are occupied by residents and vineyards. The properties to the east are zoned Agriculture- 40 acre minimum (AG 40) and are solely residential. The properties to the west are zoned Rural Residential- 5 acre minimum / Flood Plain (RR 5 + FP) and include residential uses as well as the Russian River.

The neighbors are concerned with the continued operation of the pre-composted materials and on-site composting aspects of the project and its

environmental review under the California Environmental Quality Act (CEQA) and appreciate this opportunity to comment on the project and its review, particularly with respect to an inadequate project description; potential impacts related to odors, water quality, traffic, and cumulative impacts; improper baseline; and inadequate mitigation measures. The comments related to the commercial dog kennel and breeding aspect of the project are with respect to the baseline for evaluating the significance of impacts and cumulative impacts. There also is a concern with awarding a company who has violated its prior use permit with a new permit allowing the very conduct that caused the violation.

CEQA Law

"The overriding purpose of CEQA is to ensure that agencies regulating activities that *may* affect the quality of the environment give primary consideration to preventing environmental damage. [Citation.]"¹ Thus, an EIR is required whenever substantial evidence in the record supports a fair argument that significant impacts *may* occur.² Even if other substantial evidence supports the opposite conclusion, the agency nevertheless must require an EIR.³

The fair argument standard creates a low threshold for requiring preparation of an EIR.⁴ It is founded upon the principle that, because adopting a negative declaration has a "terminal effect on the environmental review process,"⁵ an EIR is necessary to resolve "uncertainty created by conflicting assertions,"⁶ i.e., by a conflict of experts. An EIR also allows for a discussion of alternatives to

¹ *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117 [citation omitted].

² Pub. Resources Code § 21080, subds. (c), (d); CEQA Guidelines (14 Cal. Code Regs.) § 15064, subd. (f)(1).

³ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

⁴ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁵ *Citizens of Lake Murray Area Association v. City Council* (1982) 129 Cal.App.3d 436, 440.

⁶ *No Oil, Inc.*, *supra*, 13 Cal.3d at 85.

the project as proposed and furthers the substantive mandate of CEQA. The substantive mandate of CEQA provides that public agencies refrain from approving projects for which there are feasible and environmentally superior alternatives.⁷ A negative declaration, on the other hand, does not allow for a discussion of alternatives to the project.

Inadequate/Segmented Project Description

CEQA defines a project as the "whole of the action" that may result in a direct or indirect physical change in the environment.⁸ By fully analyzing the whole project it is ensured "that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences."⁹

The Staff Report and ND describe a project that includes a commercial dog kennel and breeding business, the continuing operation of the packaging, processing and sale of pre-composted materials and amendments, and the on-site composting of 3,000 tons of grape pomace per year on 5 acres of the 13.5+ acres of property. The remainder of the property is in vineyard production.

The vineyard production aspect of the property should be included in the project review. The vineyard production includes such activities as planting, maintenance, manual or mechanical harvesting, the potential application of fertilizers and pesticides, and watering or irrigation, all of which implicate impacts on the environment including but not limited to biological, hydrology, noise, air quality, traffic, and cumulative impacts.

Baseline Issue

The proper baseline to analyze environmental impacts is the project as permitted and as operating as permitted. Thus, the proper baseline includes only the packaging, processing and sale of pre-composted landscaping and garden materials, the commercial firewood lot, and all conditions per Use Permit #U 49-

⁷ *Citizens of Goleta Valley v. Board of Supervisors (Goleta I)* (1988) 197 Cal.App.3d 1167, 1182.

⁸ Guidelines, § 15378, subd. (a).

⁹ *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

85. It does not include the proposed commercial dog kennel, the importing of 3,000 tons of grape pomace for composting on-site, or the extended Sunday hours.

Thus, all impacts must be measured using the proper baseline in order to accurately determine their level of significance.

The Project May Create Significant Environmental Impacts

►Odors

Instead of confronting the issue prior to project approval, it is being recommended that the applicant, with a history of odor impacts and complaints, be "allow[ed] . . . to find ways to modify their operations that will reduce odors from traveling off-site." (Planning Commission (PC) staff report, July 21, 2011, p. 5.)

Odor impacts have not been analyzed; they have not been identified, quantified, qualified, characterized, or mitigated. Furthermore, the solution to the unanalyzed impact is being left to future analysis by the Department of Environmental Health (DEH). (PC staff report, p. 5 (" . . . , the DEH upon determining that objectionable odors from the facility are traveling off-site and finding that the applicant is not adequately addressing odor controls, can require operational and/or technical modifications to the facility as necessary to minimize odors.").)

It is known that odors have been a substantial problem in the past resulting in "numerous complaints" to the Air Quality Management District (AQMD), "resulting in the consumption of significant District time and resources;" Although the applicant has developed an odor impact minimization plan (OIMP), it is primarily reactive, identifying steps to be taken after odor complaints are received. In any event, the OIMP has not undergone a peer review for effectiveness either by an outside expert or the AQMD.

The odor impacts, at least on the 95 residences within 2000 (33 of which are within 1000 feet), must be analyzed and mitigated.

►Water Quality

Although the staff report discusses grading, installation of drop inlets, and existence of a berm separating the leachate containment pond from the Russian River to avoid runoff into the River, there is no hydrology report or expert analysis

to support the effectiveness of these measures to avoid water quality impacts. For example, the staff report makes no mention of the potential for underground contamination of the River.

Also, the staff report acknowledges the pond is in the 100-year flood plain and the potential for the pond to be overtaken in the event of a sizable flood, there are no measures to mitigate this event. Thus, the impact remains potentially significant and unmitigated.

As explained by expert Richard Makdisi of Stellar Environmental in the attached letter report, the project may create significant impacts to hydrology and water quality, including to surface water and groundwater. The project can cause surface water to become contaminated through contact with the composting material, grape pomace, and dog waste. The western area of the site is within a floodplain and, should the Russian River flood and erode the pond berm, the contaminated pond water will mix with the floodwaters and thus significantly and negatively affect the River. Finally, the retention pond is unlined, thus creating potential impacts to shallow groundwater by infiltration of the leachate that will accumulate in the pond.

A hydrology/water quality study should be prepared prior project approval. The deferral to a future plan is illegal under CEQA.

►Traffic

The staff report simply states that it "is unaware as to how many vehicle trips result from NAO customers, employees, and delivery vehicles" and, because the County Department of Transportation (DOT) provided a "no comment" response to the referral, provides no analysis of the traffic impacts.

The fact that staff is unaware of the traffic the project generates begs the question. The lack of information is not a substitute for environmental review. Also, the fact that DOT did not comment does not substitute for environmental review. Without knowing the amount and type of traffic and determining the level of the impact it cannot be concluded "that access is satisfactory and no additional road improvements are necessary." (PC staff report, p. 5.) It also cannot be said that there will be no traffic impacts.¹⁰

¹⁰ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.

►Lack of Analysis of Other Impacts

The staff report mentions but does not analyze the impacts of reducing the 100 foot buffer between the northern property line and stored materials to 20 feet. The purpose of the 100 foot buffer is to help minimize any potential nuisance to the off-site receptors along the northern property line. The northern property line is adjacent to residents and vineyards and the effects of the dramatically lessened buffer must be analyzed.

It also does not analyze the impacts of the commercial dog kennel or vineyards in combination with the composting aspect of the project.

Inadequate Mitigation Measures/Conditions of Approval

Mitigation measures must lessen or minimize impacts and, thus, cannot defer solutions to the future. "By deferring environmental assessment to a future date, [the ND] runs counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process."¹¹ A "study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA."¹²

The following conditions of approval are improper under CEQA because they simply leave the development of the plan to the future, without specifying performance criteria:

* * *

3. The odor impact coordinator shall coordinate with the Local Enforcement Agency to make any operational and/or technical modifications necessary to minimize the likelihood of future odors, redesigning portions of the facility to employ different technologies, or other such measures as necessary to minimize objectionable odors.
4. The applicant shall execute a waiver authorizing the Local Enforcement Agency (LEA), on written notice, to immediately order

¹¹ *Id.* at 307.

¹² *Ibid.*

North American Organics to stop taking a specific material if the LEA determines that the individual material is causing strong off-site odors to receptors (residents) which have been verified by the LEA. The LEA may impose additional reasonable and feasible operational and/or technical modifications to the facility and the Odor Control Plan to minimize off-site odors.

5. Prior to the use of the kennels, the applicant shall develop a kennel waste management plan that is acceptable to the Division of Environmental Health and provide the Department of Planning and Building Services with a letter from the Division noting their satisfaction with the plan.

* * *

13. Mitigation measures and operational procedures identified in the applicant's Odor Impact Minimization Plan shall be strictly adhered to.

Also, the permit as proposed would allow the *unlimited* processing and sale of materials. Condition # 12 reads, "A maximum of 3,000 tons of grape pomace and 15,000 cubic yards of total materials shall be permitted on site *at any given time.*" (Emphasis added.) This is written in a manner to potentially allow virtually unlimited annual processing and sales provided the on-site storage at any given time does not exceed the stated quantities. This permits a major expansion of processing.

The Applicant Should be Held in Violation of Use Permit #UR 49-85/99

In 1985, the applicant was granted its original Use Permit #U 49-85 allowing the continuance of a composting operation (animal waste processing) along with a commercial firewood lot. The permit was renewed in 1989 as #UR 49-85/89.

However, in a letter dated May 6, 1999, the Regional Water Quality Control Board (RWQCB) stated that, if the applicant was to engage in commercial compost operations, it would need to file a Notice of Intent for the General Industrial Storm Water Permit. The applicant "indicated that [it] would prefer to modify [its] his activities such that a storm water permit would not be necessary." (RWQCB letter.) Therefore, the water board and the applicant reached an understanding that the applicant would discontinue commercial composting operations and store all materials which are deleterious to water quality under

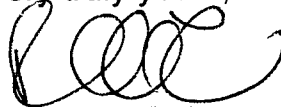
roofs or tarps whenever it is raining. Since the water board had "no evidence that [the applicant] is operating outside of our understanding[, it had] no objection to renewing the Use Permit [#UR 49-85/99] for the North American Organics facility." (RWQCB letter.)

Therefore on August 5, 1999, the Planning Commission approved the applicant's Use Permit Renewal #UR 49-85/99 prohibiting the composting of materials on-site and limiting the operation to the sale of pre-composted materials and amendments only.

However, it turns out that the applicant ignored its agreement with the water board and ignored the conditions of its use permit and accepted the delivery of grape pomace from local vineyards for composting on-site. It was only then that the applicant decided to attempt to verify its actions by including composting in its current Use Permit request.¹³

For all of these reasons, the neighbors respectfully requests the County require the preparation of an EIR for this project. Thank you for your close attention to this matter.

Very truly yours,



Rose M. Zoia

cc: Dusty Duley

¹³ It appears the applicant took the same tactic with its request to establish a commercial dog kennel. According to the Planning Commission staff report dated July 21, 2011, the kennel already has been constructed: "A kennel has been constructed that includes 270 square feet of inside space along with outside runs totaling 144 square feet." (P. 3.) Thus, this request also is a post hoc rationalization for an already committed violation.

October 31, 2011

Rose M. Zoia, Esq.
Law Offices
50 Old Courthouse Square, Suite. 401
Santa Rosa CA 95404

Subject: Hydrology and Water Quality Impact Analyses for the proposed NAO project

Dear Ms. Zoia,

INTRODUCTION AND BACKGROUND

Stellar Environmental Solutions, Inc. (Stellar Environmental) completed a review of the proposed NAO project information provided by the County of Mendocino in their June 24, 2011 Notice of Public Hearing and Availability of Draft Negative Declaration (ND) for Public review.

The North American Organic's (NAO) submitted an initial Use Permit request in January 2011 to continue the packaging, processing and sale of pre-composted landscaping and garden materials, but they neglected to disclose that they were composting grape pomace from local vineyards at their facility, a violation of their previous Use Permit #UR 49-85/99. They then amended their application and submitted a Compost Facility Operations Plan in May 2011 up to 6,000 cubic yards of grape pomace spread in five piles across a 360 by 75 foot area. NAO's application indicated 3,000 tons of grape pomace per year would be treated using the aerated static pile (ASP) method of composting. Their May 2011 Operations Plan describes the ASP method to maintain aerobic conditions throughout the compost pile by mechanically forcing air into the pile. They would also use heavy vehicle equipment in their operation.

The NAO operations also applied to have a dog kennel and breeding operation on their property that would have up to 30 dogs. No details of their dog breeding/kenneling operations were provided to address how waste generation from the dogs would be managed and mitigated.

Stellar Environmental's review of the project information suggests that significance of water quality impacts from the expanded operation cannot be adequately evaluated due to a lack of pertinent information provided. In addition, the apparent data gaps are ones normally required to be filled to adequately evaluate CEQA impacts in other similar composting operations historically. The Initial Study checklist indication there would be "no change to the quality of ground water, either through direct additions or withdrawals..." is not substantiated with the data. On the contrary, there appears to a potential for significant impacts unless adequate baseline data is collected and appropriate mitigation measures designed where needed.

We understand that there are questions about the project being in potential noncompliance with Water Board concerns, sensitive siting issues (with retention pond designed to capture the NAO facility drainage being within an existing flood plain of the bordering Russian River) and the potential for infiltration of the ponded waste into shallow groundwater. There is also some question as to whether the same levels of protection required for a similar project are being required at this one and if conditions normally required by the Water Board are required at the proposed NAO. The objective of this data review and findings by Stellar Environmental is to complete an assessment of whether there is a reasonable likelihood of impacts not currently addressed in the hydrology/water quality assessment completed by the NAO applicant, and, if so, to provide impact analyses to identify those areas of residual concern that could result in the recommendation for a full or focused Environmental Impact Report.

ENVIRONMENTAL SETTING

Facility Description and Setting

The main concern regarding water quality is leachate entering into nearby water bodies including the Russian River. Some materials are stored under roofed structures; however most of the materials are stored outside within the material storage area as shown on the NAO Operations plot plan. The storage area has been graded to direct leachate and stormwater to the west and into a retention or containment pond. Two drop inlets have also been installed to capture runoff and direct it into the pond. A berm that appears to be a couple of feet above grade separates the pond and the Russian River. The plan is to collect runoff "periodically" to use to saturate composting materials during dry times. Settled materials that accumulate at the pond bottom are removed as necessary and reintroduced to the composting piles. The pond is in the 100 year flood plain as designated by the Federal Emergency Management Agency.

Regulatory Setting

The NAO operations are a waste treatment. The purpose of the Federal Water Pollution Control Act (Clean Water Act) (administered by the U.S. Environmental Protection Agency [EPA]) is to protect and maintain the quality and integrity of the nation's waters by requiring states to develop and implement state water plans and policies.

Federal Emergency Management Agency

FEMA's National Flood Insurance Program (NFIP) is intended to encourage State and local governments to adopt responsible floodplain management programs and flood measures. As part of the program, the NFIP defines floodplain and floodway boundaries that are shown on Flood Insurance Rate Maps (FIRMs).

National Pollutant Discharge Elimination System. Part of the Clean Water Act provides for the National Pollutant Discharge Elimination System (NPDES), in which discharges into navigable waters are prohibited except in compliance with specified requirements and authorizations. Under this system, municipal and industrial facilities are required to obtain a NPDES permit that specifies allowable limits, based on available wastewater treatment technologies, for pollutant levels in their effluent. In California, the EPA has delegated the implementation of this program to the California SWRCB and the North Coast (that has jurisdiction over the NAO property) RWQCB.

Water Quality Standards. Section 303 of the Clean Water Act establishes water quality standards consisting of designated beneficial uses of water bodies and water quality standards to protect those uses for all Waters of the United States. Under Section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. Impaired waters are those that do not meet water quality standards, even after point sources of pollution have installed the required levels of pollution control technology. The law requires that these jurisdictions establish priority rankings for waterways on the impaired list and develop action plans to improve water quality. This process includes development of Total Maximum Daily Loads (TMDLs) that set waste load allocations for point sources and load allocations for non-point source pollutants. The Ducheny Bill (AB 1740) requires the State Water Resources Control Board (WRCB) and its nine Regional Water Quality Control Boards (RWQCB) to post this list and provide an estimated completion date for each TMDL. The Porter-Cologne Act requires Reports of Waste Discharges to be filed before the RWQCB issues authorizations for waste discharge. The RWQCB then prescribes waste discharge requirements, which serve as NPDES permits under a provision of the Porter-Cologne Act.

The California Water Resources Control Board (WRCB) administers water rights, water pollution control, and water quality functions statewide. The WRCB provides policy guidance and budgetary authority to the nine Regional Water Quality Control Boards (Water Board's), which conduct planning, permitting, and enforcement activities. The WRCB and the RWQCB's share the responsibility under the Porter-Cologne Act to formulate and adopt water policies and plans and to adopt and implement measures to fulfill the Clean Water Act requirements. In the project site vicinity, the *Regional Water Quality Control Plan for the North Coast Region I* (North Coast RWQCB, 2007) serves to protect water quality consistent with identified beneficial uses (see below). The Porter-Cologne Act requires Reports of Waste Discharges to be filed before the RWQCB issues authorizations for waste discharge. The RWQCB then prescribes waste discharge requirements, which serve as NPDES permits under a provision of the Porter-Cologne Act. The Basin Plan, the Enclosed Bays, and Estuaries Plan (Water Board Basin Plan, 2007), and the general NPDES permit (discussed above) regulate discharges.

State policy for water quality control in California is directed toward achieving the highest water quality consistent with maximum benefit to the people of the state. Therefore, all water resources must be protected from pollution and nuisance that may occur from waste discharges. Beneficial uses of surface water, groundwater, marshes, and mud flats serve as a basis for establishing water quality standards and discharge prohibitions to attain this goal.

Under the Water Board requirements an operation of over one acre such as the NAO operation requires a Storm Water Pollution Prevention Plan (SWPPP) to be completed by a certified Qualified SWPPP Developer (QSD). The QSD certification conferred by the Water Board following a required 3 day course work and successful outcome of an exam. The SWPPP program reporting is overseen by the Water Board, and may include storm water inspection, sampling, observation, and reporting. The intent of the SWPPP is to prevent or minimize the potential release of toxic or hazardous pollutants in significant amounts to discharge waters. A BMP program is required to include information of potential releases and management of solid and hazardous waste. A SWPPP program is designed to monitor primary collection areas of stormwater and depending on the site use and overall area, analytical testing of stormwater discharge may be required.

Stormwater runoff from construction areas of one acre or greater requires either an individual permit or coverage under the statewide General Construction Stormwater Permit. The Water Board, in a letter to the applicant dated May 25, 2011, notified NAO of the need to file a Notice of Intent for coverage under the Industrial Storm Water General Permit as well as complete a SWPPP that outlines how ground and surface water will be protected.

Mendocino County

The Mendocino County General Plan has no specific groundwater protection element, but a number of policies in Public Health and Safety element of the General Plan describe the need for protection of water quality. In addition, as described above, the Mendocino County Environmental Health has additional regulatory oversight that could relate to groundwater resources.

Composting Waste Facility Control Requirements

Compostable Materials Handling Operations and Facilities regulatory requirements are presented in California Title 14, Natural resource Division 7, promulgated by California Integrated Waste Management Board. The materials at the NAO facility would be defined as agricultural materials. Composting programs, such as grape pomace, can have potential for impacts on water quality. Such programs can have required controls, testing, procedures and protocols that are reviewed and approved by the regulators.

Dog Waste From kennels

Dog wastes, like any animal waste in bulk, can be toxic and without a management system such as a septic the dog waste will add to the potentially toxic brew draining into retention pond.

Topography and Geography

The terrain at the property drains to the west, towards the Russian River. An unlined retention or catchment pond is located about 50 feet east of the Russian River.

Surface Water Features

The NAO Operations Plan does address surface water management and potential discharge from the on-site retention pond. No pond capacity data of maximum runoff and accumulation was available to determine if any potential for discharge to the River might occur in an excess runoff capacity situation.

Flood Hazards

The project site is located within the Russian River flood zone. FIRM (FEMA Federal Insurance Rate Map). The retention pond, although not delineated with any precision on any site plan provided in NAOs operations Plan, appears to be within the flood plain zone. While no flooding has apparently occurred to date that does not preclude future flooding.

Surface Water Quality

The surface water will be adversely impacted by runoff from the composting operations leachate and dog waste. The design intent is to direct all surface water to the unlined retention pond to manage its impacts to the environment.

Beneficial uses of the Russian River abutting the property are agricultural supply, industrial service and process water, contact and non-contact water, recreation, warm fresh water habitat, preservation of rare, threatened and endangered species, and groundwater recharge.

Groundwater Conditions and Quality

Local groundwater quality has not been characterized at the site in terms of depth to groundwater or groundwater quality upgradient and downgradient of the operations to provide baseline data. The sediments underlying the new expansion area are consistent with the regional geology, consisting principally of interbedded sand, silt, and clay with occasional beds of coarse sand and gravel. Groundwater gradient (the steepness of the slope of the groundwater flow) is likely to vary seasonally and will be strongly influenced by the recharge from the adjacent Russian River. No shallow water quality data, either upgradient or downgradient of the retention pond, were found. Groundwater is expected to be shallow given the proximity to the Russian River. Recharge to the unconfined aquifer, both regionally and locally, is from local rainfall and the Russian River, reservoirs, and surface runoff within the local hydrologic basin. The project area is in a General Plan-designated substantial groundwater recharge (Russian River) area.

Groundwater Uses and Supply

The designated beneficial use of the groundwater in the project area, as specified in the Basin Plan, are domestic and municipal supply, agricultural supply, industrial service supply, and industrial process supply. Groundwater wells in the area are used primarily to supply water for agricultural and domestic purposes. Groundwater within one mile of the project site is likely to be pumped by local existing irrigation and domestic wells.

IMPACTS AND MITIGATION

Standards of Significance

According to CEQA guidelines, the proposed project would have a significant impact with regard to hydrology and water quality if it would:

- Substantially degrade water quality;

- Contaminate a public water supply;
- Substantially degrade or deplete groundwater resources;
- Substantially interfere with groundwater recharge;
- Cause flooding or subject structures to flood hazards;
- Substantially modify a local or regional drainage feature (i.e. creek alignment);
- Cause significant erosion or sedimentation;
- Generate more leachate than can be handled by the existing retention pond control system; or
- Cause or be subject to substantial flooding, erosion, or siltation.

According to Initial study checklist filled out there are significant impacts (unless mitigated) associated with item 3B (Changes in absorption rates, drainage patterns or rates and amount of surface runoff). The initial study checklist indicated no impacts from items 3G (Change in the quality of ground water, either through direct additions or withdrawals...) but charges to groundwater quality could be significant through infiltration through the unlined retention pond.

The CEQA standards incorporate state-of-the-art engineering requirements that are intended to reduce the risks associated with waste disposal facilities to an acceptable level. An inconsistency between the proposed project and regulations related to surface or groundwater hydrology and water quality also would have the potential to result in significant impacts.

Impact 1: Surface water can become contaminated through contact with the composting material, grape pomace and dog waste.

If rainwater falling on the NAO general composting, grape pomace and dog waste picks up dissolved contaminants and is not controlled by a properly designed drainage system, surface water could potentially flow into the Russian River either from mixing if the Russian River floods or otherwise. The applicant's NAO Operations Plan does not discuss any design criteria for the pond size, or maintenance or mitigations. Typically retention ponds waste operations use local rainfall data, and the Rational Method was used to estimate maximum potential runoff from a 100-year, 24-hour storm event. It is not known if the surface water control system and drainage control structures for the proposed project are sized to accommodate the calculated peak flows. The proposed surface water control system could also divert run-on from properties surrounding the NAO

Mitigation Measure 1: The following mitigation measures are proposed for consideration before the project is approved:

- The applicant should complete a drainage study for the proposed expansion and provide calculations to show the retention pond had the capacity to handle the drainage directed to it. Past indication of this not being an issue is not a credible argument for not completing a technically defensible mitigation. The drainage study should utilize local rainfall data, and the Rational Method would be used to estimate maximum potential runoff from a 100-year, 24 hour storm event. The surface water control system and drainage control structures for the proposed project would be sized to accommodate the calculated peak flows.
- The project includes channel/drainage ditch, culverts reconfiguration and localized flood protection berms to isolate the surfaces from Russian River floodwaters.
- The operations plan should include contingency plans to mitigate tire ruts created by the heavy vehicles used in the operations that could adversely compromise the design drainage plan.

Impact 2: If the Russian River floods the western area of the site within the floodplain erosion of the pond berm could occur and the contaminated ponded water mix with the floodwaters.

Erosion of the berm by the floodwater from the Russian River could compromise the berm surrounding the pond and result in mixing that would create sedimentation and liquid waste contamination impacts to the Russian River. The current pond appears to be a pushed up earth berm that is not likely to withstand flood water forces.

Mitigation Measure 2: The following mitigation is proposed for consideration before the project is approved:

- A berm designed to withstand the flood water should be submitted for approval and an erosion and sedimentation control plan provided. Proposed structural controls should include a berm design to withstand floodwater and drainage control. Operational controls include maintenance of the drainage system and pond by keeping ditches and pond clear of debris and excessive vegetation, and making needed repairs to drainage structures. Corrective measures would be implemented if inspections show excessive erosion or damage to drainage channels.

- An above ground storage tank should be considered to contain potential excess drainage leachate from the retention pond where flooding conditions are imminent.

Impact 3: Shallow groundwater quality could be adversely impacted by infiltration of the accumulated leachate into the unlined retention pond.

Without a baseline understanding of the shallow groundwater quality upgradient and downgradient of the retention pond, it is not possible to assess the potential adverse impact of infiltration from the pond into groundwater. The composting, grape pomace and untreated dog waste runoff into the retention pond could percolate through the ground underlying the pond and potentially contaminate groundwater

Mitigation Measure 3: The following mitigation measures are proposed for consideration before the project is approved:

- The applicant should complete the installation of two groundwater monitoring wells, one located upgradient and one downgradient of the retention pond to measure water levels and water quality.
- Baseline groundwater samples should be collected as a condition of project approval for field parameters (temperature, specific conductance, pH, and turbidity), and, chloride, sulfate, nitrate as nitrogen, total dissolved solids, carbon bicarbonate, total organic carbon, chemical oxygen demand, dissolved metals (calcium, magnesium, sodium, potassium), and total petroleum hydrocarbons (oil and grease) to evaluate differences in the upgradient and downgradient water quality.

Stellar Environmental will complete a letter of findings to provide to the upcoming November 2011 Mendocino County Board of Supervisors public hearing. The letter report discusses the information reviewed and provides an opinion on the NAO CEQA Negative Declaration being considered.

Sincerely,

Stellar Environmental Solutions, Inc.



Richard S. Makdisi, P.G., R.E.A.
Principal Geochemist and President