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August 11, 2021

Via Email Only

City Council, City of Elk Grove, c/o City Clerk, jlindgren@elkgrovecity.org;
cityclerk@elkgrovecity.org

Antonio Ablog, Planning Manager, aablog@elkgrovecity.org

Re: Agenda Item No. 8.1: Additional Comments on Kubota Tractor Corporation Project Appeal (PLNG21-026)

Dear Honorable Mayor Singh-Allen, City Council Members, and Mr. Ablog:

On behalf of **Sacramento County Residents for Responsible Development ("Residents")** we submit the following comments in support of our appeal of the City of Elk Grove ("City") Planning Commission's ("Commission") approval of the Major Design Review ("MDR"), Conditional Use Permit ("CUP"), Special Parking Permit, and Tree Removal Permit for the Kubota Tractor Corporation Project, planning file number PLNG21-026 ("Project"), including the Commission's finding that no further environmental review is necessary pursuant to Sections 15168 and 15162 of the California Environmental Quality Act ("CEQA").

Kubota Tractor Corporation ("Applicant") proposes the development of a 631,465 square-foot manufacturing and distribution facility on 39.67 acres of City-owned property located at 10251 Grant Line Road, APN: 134-0190-009, with 32.54 acres for building, vehicle circulation and landscaping along and 7.13 acres for a stormwater detention facility. The Project site is bordered on three sides by agricultural production uses; the remaining side, to the north of Grant Line Road, is zoned for both commercial and residential uses.

We reviewed the Staff Report and related Project documents with the assistance of environmental health, air quality, GHG, and hazardous materials expert James Clark, Ph.D of Clark & Associates Environmental Consulting, Inc.

5360-005j

August 11, 2021

Page 2

The comments and curriculum vitae of Dr. Clark are attached to this letter as Exhibit 1.¹ Our July 15, 2021, comment letter on the Project and July 26, 2021, appeal letter is incorporated by reference.

The City lacks substantial evidence to support its conclusion that the Project's environmental impacts are fully analyzed and mitigated under the Specific Plan Subsequent Environmental Impact Report ("SEIR"). Our comments on the Project show that the City failed to conduct legally required analysis of site-specific Project impacts which were not examined in the SEIR, and that there is new information demonstrating that the Project will have new and more severe environmental effects than were analyzed in the SEIR, including: (1) the City failed to conduct required analysis of air quality and public health impacts, (2) there are potentially significant, unmitigated impacts from greenhouse gas ("GHG") emissions, (3) there is a significant, unmitigated impact from heavy duty truck traffic, and (4) the Commission's Staff Report and findings were based on erroneous air quality data. Additionally, the City's Staff Report for the instant agenda item fails to address the concerns of Residents and contains proposed findings which are not based on substantial evidence.

Residents respectfully request that the City Council grant this appeal and remand the Project to staff to prepare a legally adequate subsequent EIR for the Project which fully discloses and mitigates the Project's site-specific impacts.

I. THE CITY MUST PREPARE A SUBSEQUENT EIR TO ANALYZE THE PROJECT'S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS THAT WERE NOT ANALYZED IN THE SEIR

Where, as here, a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-step process to examine the later project to determine whether additional environmental review is required.² First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.³ Whether a

¹ **Exhibit 1:** Letter from James Clark to Kevin Carmichael, Response to City of Elk Grove Staff Report For Proposed Kubota Tractor, Co. Assembly Factory, Elk Grove, California, August 11, 2021, ("Clark Comments").

² See CEQA Guidelines, 15168, subd. (c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

³ CEQA Guidelines, § 15168, subd. (c)(1).

later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.⁴ If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.⁵ A later EIR is required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR.⁶

Additionally, if the agency determines a project is covered by a prior program EIR, it must consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR, including new information about environmental impacts that are more severe than previously analyzed.⁷ Pursuant CEQA Guidelines sections 15168(c)(2) and 15162, subsequent or supplemental environmental review is required when there is substantial evidence demonstrating that any of these three circumstances have occurred.

The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.⁸ An agency cannot conclude that an impact is less than significant, or no more severe than previously analyzed, unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁹

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.¹⁰ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹¹ In

⁴ *Id.* at (c)(2).

⁵ CEQA Guidelines, § 15168, subd. (c)(1).

⁶ 14 C.C.R. § 15152(f).

⁷ CEQA Guidelines, § 15168, subd. (c)(2).

⁸ 14 CCR § 15064(b).

⁹ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

¹⁰ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

¹¹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

August 11, 2021

Page 4

reviewing challenges to an agency's approval of a CEQA document based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."¹²

A. The City Must Analyze Previously Unstudied Air Quality and Public Health Impacts

In our July 15, 2021, comments to the Planning Commission, we explained that the City failed to adhere to binding mitigation measures from the SEIR which required the City to perform analysis of Project specific diesel particulate matter ("DPM") and toxic air contaminant ("TAC") emissions prior to approving development of the Project. To date, the City has failed to adequately address this matter.

The SEIR's mitigation measures stipulated that future development of the site would require that the City perform a Health Risk Analysis ("HRA") to analyze the Project's health risks from TACs and to compare the risk to applicable thresholds of significance. The City did not perform an HRA for the Project and, as such, has failed to analyze potentially significant public health impacts from Project construction and operation, in violation of CEQA and of the SEIR's mandatory mitigation measures. The City must perform an HRA and set forth its findings in a subsequent EIR.

Additionally, the City's Staff Report fails to address the planned future development of the Triangle Project directly across the street from the Project site. According to recent offering documents from Bayless Properties, the parcel directly north of the Project site, less than 100 feet away, will be developed with up to 300 units of high-density residential housing.¹³ The City must analyze the health impacts to the community in light of this reasonably foreseeable development and implement additional mitigation measures to protect current and future residents from the adverse impacts caused by exposure to DPM, if the analysis demonstrates that the health risk from potential exposure to TACs exceeds significance thresholds.

¹² *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

¹³ Bayless Properties, Triangle Point, March 2020, available at <http://baylessproperties.com/wp-content/uploads/2020/03/Triangle-Pt-M-1-brochure-UPDATED-Mar-2020.pdf>.

B. The Staff Report's Proposed Findings Regarding the Project's Site Specific Traffic and Operational Air Quality Impacts Are Unsupported

The Staff Report fails to respond to Residents' comments, and the comments of its experts, demonstrating that the Project could introduce hundreds of new heavy truck trips to the Project area during operations. The Staff Report states that Residents failed to provide substantial evidence that the Project will result in hundreds of heavy truck trips, and on the other hand, that the Applicant has assured staff that the Project will result in 38.5 daily truck trips based on the Applicant's existing facility in Lodi, California.¹⁴ The CEQA guidelines state that, " 'substantial evidence'... means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion even though other conclusions might also be reached".¹⁵ Unsubstantiated opinion or narrative, and evidence which is clearly erroneous or inaccurate, do not constitute substantial evidence.¹⁶

Here, Residents' expert, James Clark, relied on data in the City's SEIR to determine that the Project would result in hundreds of heavy truck trips. Conversely, the City's response relies on the Applicant's erroneous self-reporting that their facility in Lodi only generates 38.5 truck trips per day. As explained below, the Applicant's figures cannot be relied on as substantial evidence in support of the City's CEQA Section 15168 consistency determination for several reasons.

1. The Applicant's Truck Trip Calculations Contain Arithmetic Errors

In his review of the Staff Report and attachments, Dr. Clark identified a clear error in the Applicant's calculations of heavy truck trips. Dr. Clark points out that the Applicant divides the number of truck trips by the number of days in the month, and not the number of working days.¹⁷ This results in fewer truck trips per day as the number of truck trips are spread over a greater number of days. Dr. Clark recalculated the trip analysis using the number of workdays in each month and found that the Applicant's Lodi facility generated an average of 54.01 heavy truck trips per day, instead of 38.24, during the time period provided by the Applicant.¹⁸

¹⁴ Staff Report, p. 7.

¹⁵ CEQA Guidelines, §15384.

¹⁶ *Ibid.*

¹⁷ Clark Comments, p. 4.

¹⁸ *Id.* p. 5.

2. The Applicant's Truck Trip Generation Calculations are Based on a Limited Sample Size

Dr. Clark points out that the Applicant's truck trip generation figures were cherry-picked from data collected over only the first five months of 2021, during a global pandemic, despite the Lodi facility being in operation since 2005.¹⁹ By limiting the sample size to a period where reduced operational capacity is likely, the heavy truck trip generation data cannot be relied on to support the City's decision not to conduct further analysis of the potential air quality impacts from the Project. The City must conduct an independent truck trip study based on data which accurately describes truck traffic during normal operating conditions. Without this analysis, the City lacks substantial evidence to support a determination that the Project will not cause significant regional air quality impacts or health risk to nearby communities.

3. The Applicant's Truck Trip Analysis Ignores the Increase in Building Size

Dr. Clark explains that the Applicant's existing facility in Lodi, which the City relies on for the current Project's air quality and truck trip analysis, is only 28 percent the size of the planned Project. The increased size of the Project's building will allow for increased operations at the Project site which do not occur at the Lodi facility. Dr. Clark estimates that this additional operational capacity will result at least 3.5 times more heavy truck traffic based on the size of the facility.²⁰ It defies logic to expect that a building over three times larger would not result in substantially more truck trips during operations.

4. The Staff Report and Supporting Documentation Ignore the Use of Heavy Equipment On-Site

The City failed to take on-site diesel emissions into account when determining the Project's air quality impacts. The Applicant plans to assemble tractors, construction equipment and other implements on site.²¹ A large number of products assembled on site use diesel fuel as their primary fuel source. Moving and testing the assembled products will result in diesel emissions that were not analyzed under the SEIR or the City's 15168 Review. Additionally, the heavy

¹⁹ *Id.* p. 3.

²⁰ *Id.* p. 5.

²¹ Staff Report, p. 8.

equipment on site will require the use of cargo handling equipment such as forklifts and yard tractors which generate DPM.²² The on-site testing and use of heavy equipment was not addressed or analyzed in the SEIR or the City's 15168 Review performed for the Project.

The heavy-duty trucks and on-site equipment will release DPM and associated TACs that may exceed the Sacramento Metropolitan Air Quality Management District's ("SMAQMD") thresholds of significance. The City must quantify the emissions from the Project and assess the health risk to local residents. If the health risks exceed SMAQMD's significance thresholds, then the City must implement additional mitigation measures to reduce the health risk to the community to less than significant levels before approving the Project. This analysis must be done in a subsequent EIR.

II. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO UPHOLD THE CONDITIONAL USE PERMIT AND DESIGN REVIEW APPROVALS FOR THE PROJECT

Approval of the Project's CUP and DRP requires factual findings, supported by substantial evidence, pursuant to the Elk Grove Municipal Code that the Project does not have any detrimental environmental or public health effects.²³

The Staff Report claims that the Project is in compliance with the General Plan, Zoning Code and other City Codes as required by Section 23.16.070 of the Municipal Code, but nowhere does it make findings, or offer substantial evidence, that the Project will not have any detrimental environmental or public health effects.

As discussed above, substantial evidence demonstrates that the Project is likely to have potentially significant impacts on air quality and public health. Residents' experts have provided ample evidence demonstrating the Project's significant impacts, including:

- Air quality and GHG impacts from Project construction and operation will be significant.

²² Clark comments, p. 6.

²³ EGMC 23.16.070(C).

- DPM emissions from construction and operation resulting in unanalyzed TAC emissions.

These effects have not been disclosed or analyzed by the City in the 15168 Review or the Staff Report for the Project, both of which claim that the SEIR is sufficient to address any potential impacts, despite the fact that the 15168 Review's admission that the SEIR did not analyze project-specific impacts. As a result, the Project fails to meet the requirements set forth by the Municipal Code. The City, therefore, cannot make the requisite findings pursuant to the Municipal Code and must deny the Project's CUP.

III. CONCLUSION

The City has improperly relied on the SEIR as an environmental document for the Project with analysis sufficient to satisfy CEQA. That SEIR, however, was never meant to serve as a review document for this specific Project. Many of the impacts likely to result from the Project will be significantly more severe than the effects evaluated in the SEIR, while others were never analyzed at all.

Furthermore, the Conditional Use Permit and Design Review required for the Project cannot be issued. As supported by substantial evidence in Residents' Appeal, and in Dr. Clark's expert comment letter attached herein, the Project will result in significant and unmitigated impacts that are not disclosed or analyzed by the SEIR. Without further mitigation measures to reduce the Project's significant impacts, the City cannot find that it is not detrimental to public health, safety, or welfare, and thus cannot approve the permits necessary for the Project to move forward.

Sincerely,

A solid black rectangular box redacting the signature of Kevin T. Carmichael.

Kevin T. Carmichael

KTC:ljl

Exhibit 1