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Item No.	16.1
From:	PED Staff

3:04 p

## **MEMORANDUM**

**DATE:** August 19, 2025

**TO:** Mayor Stapp and Council Members

**FROM:** Gabe Osburn, Director of Planning and Economic Development

**CC:** Maraskeshia Smith, City Manager  
Teresa Stricker, City Attorney  
Ashle Crocker, Assistant City Attorney  
Jessica Jones, Deputy Director, Planning

**SUBJECT: 874 N Wright Road – Elm Tree Station Appeal – Responses to Holder Law Group letter dated August 18, 2025**

The subject Appeal of the Planning Commission's denial of a Conditional Use Permit for the Elm Tree Station Project located at 874 N Wright Road (Project) is scheduled before the Council on August 19, 2025, as Item 16.1. The Council received a letter from Holder Law Group dated August 18, 2025, making a variety of claims related to the merits of the project and its associated environmental impact analysis. The following memo will describe each claim made by Holder Law Group and provide a staff response.

### **Section I Factual and Procedural Background**

#### **A. The Planning Commission Adopted Evidence-Based Findings Supporting Denial of the CUP.**

**Claim:** The Planning Commission correctly found the project inconsistent with Santa Rosa Zoning Code § 20-42.150(A)(2), which prohibits gas stations adjoining residential uses, and with the PD-0435 zoning district's express prohibition on convenience-markets. Staff's conclusion that the proposed retail market is a "small grocery store" rather than a "convenience store" is not tied to City Code definitions and mischaracterizes the use: the project description and trip generation assumptions in the applicant's own traffic study align with ITE Land Use Code 945 ("Convenience Market with Gas Pumps"), not ITE 850 ("Supermarket"), due to the inclusion of ready-to-eat food, traveler-oriented merchandise, and co-location with fueling operations.

The "commercial zone" exception in Zoning Code § 20-42.150(A)(2) does not apply here. For mixed use projects, the Santa Rosa Code states that residential units in combination with any other non-residential land use are "subject to the standards for mixed use projects in Section 20-42.090." There is no compatibility between the uses of a residential unit and a gas station.

**Response:** The project site is located in Planned Development (PD) 435. The Policy Statement of PD 435 is named "Wright-Sebastopol Commercial District," and creates a C-2-PD zoning district for the area which is a

commercial district. The project includes one multi-family (two-family) residential unit and a gas station and qualifies for the exemption established by Zoning Code § 20-42.150(A)(2). Further, Zoning Code § 20-42.090, regarding mixed use projects, includes design considerations, mix of uses allowed, maximum density, site layout and design standards, and performance standards; this section of the Code does not prohibit a residential unit from being on the same site as a gas station use.

The Zoning Code defines a Convenience Store and Grocery Store as followings:

*Convenience Store. A type of general retail store which carries a range of merchandise oriented to convenience and/or travelers' shopping needs.*

*Grocery Store. A retail or wholesale store that primarily sells food, including canned and frozen foods, fresh fruits and vegetables, and fresh (raw) and prepared meats, fish, and poultry. Large stores are defined as 20,000 square feet in size or greater. Also includes a grocery store use located within a larger format retail store where an area 20,000 square feet in size or greater is primarily devoted to the sale of food. Small stores are defined as less than 20,000 square feet in size. Also includes a grocery store use located within a larger format retail store where an area less than 20,000 square feet in size is primarily devoted to the sale of food.*

Based on the description provided by the applicant of the retail space as a "grocery market," Staff's analysis concluded that the retail use can be described as not specifically oriented to convenience and/or travelers' needs as is required to be considered a convenience store. The project description describing this retail use does not include any references to traveler-oriented merchandise. Further, the general retail use would not sell any alcohol or tobacco products and include fresh food options, potentially including a deli counter.

Regarding the Institute of Traffic Engineers Land Use Codes used in the Traffic Study, there are a limited number of land use options in the ITE *Trip Generation Manual* that could potentially be applied to the project. A supermarket land use would not make sense as it doesn't include the gas pumps, and those would likely be the primary attraction. The Convenience Store land use was used *not* because of the inclusion of ready-to-eat food, etc. as stated in the comment, but because it's the closest we could get to the proposed project. As an aside, a supermarket has fewer trips than a convenience store (per square foot), so the land use applied is conservative.

**Claim:** Conflict with General Plan Policies related to objectives for enhancing major entry corridors (Goal UC-C, Policy UD-C-1, Goal T-G, Policy T-G-1).

**Response:** The project site is not located on any designated scenic roadway and is located over 400 feet from the intersection of S Wright Road and Highway 12. General Plan 2035 and General Plan 2050 both identify Fulton Road and Highway 12 as a City Entry, but the intersection of Highway 12 and S Wright Road is neither a City Entry nor a "major corridor that links neighborhoods with downtown" (Goal UD-C).

**Claim:** The automotive-oriented design is incompatible with the adjacent pedestrian and cyclist-oriented Joe Rodota Trail.

**Response:** The project's design related to the connection of the Joe Rodota Trail has been reviewed and approved by the City's Transportation and Public Works Department. Users of the Joe Rodota Trail that choose to travel onto the project site would travel south along the eastern boundary of the project site, to the southern project site boundary, which then leads to the sidewalk adjacent to the western project site boundary. The project's design of the pathway allows sufficient room for users of the pathway to access the sidewalk without crossing into any traffic lane. The connection to the Joe Rodota Trail was incorporated into the project as part of the 2013 approval for this site. The addition was in response to concerns identified at that time related to compatibility of the proposed project and the Trail. Pedestrians are common at fueling facilities, so their presence at this site would not be unexpected or uncommon. The bicycle path proposed around the south and east perimeter of the site would allow bicyclists to travel around the site and does not add conflict points to the path of travel. The Joe Rodota Trail runs adjacent to numerous other developments that generate similar levels of traffic so there is no basis for expecting this use to introduce hazards.

**Claim:** Public Interest, Health and Safety. Underground fuel storage poses soil and groundwater contamination risks; the project would increase air pollution and is contrary to the City's Climate Action Plan and Climate Emergency Resolution.

**Response:** Staff analysis did not include any assumptions of negligence by the applicant. Any potential issues related to the storage of fuel in underground tanks will be managed in accordance with all applicable regulations and best practices if they arise following construction of the project. The Bay Area Air Quality Management District (BAAQMD) establishes thresholds for criteria air pollutants. Project-specific environmental impact analysis was conducted pursuant to the California Environmental Quality Act (CEQA) that analyzed the project's consistency with those established thresholds. The Elm Tree project application included the Climate Action Plan (CAP) New Development Checklist (Staff Report Attachment 15) which outlines the specific measures associated with the project that are consistent with the CAP. The City's Climate Emergency Resolution (Resolution) established community-wide goals to contribute to a Countywide Climate Emergency Mobilization Strategy and to collaborate with the Regional Climate Protection Authority to integrate climate change into policy decisions. The Resolution does not contain any specific standards or regulations that would preclude the project's approval.

**Claim:** The Addendum failed to address new and more severe impacts to traffic, water quality, greenhouse gas emissions and air quality.

**Response:** See responses below under Section II(A).

**B. Additional Considerations Implicated by New Information in Staff Report and Presentation Slides.**

**Claim:** Additional Considerations Implicated by New Information in Staff Report and Presentation Slides related to sales tax revenue and other public benefits.

**Response:** Sales tax was not a basis of staff's analysis that concluded the required findings could be met to approve the project. The park-like amenities are described in the Staff Report as a privately maintained, publicly accessible amenity.

## **Section II. Discussion: The Project Poses Significant Risks and Potential Liabilities**

### **A. CEQA Compliance Risks**

**Claim:** The project analyzed in the 2024 Addendum is different from the project analyzed in the 2013 Mitigated Negative Declaration.

**Response:** As described in the Addendum, and acknowledged in commenter's letter, the project is exactly the same as it was in 2013, with the exception of (1) parcel division and (2) removal of a decayed tree (Addendum, pp 4, 11). These changes are minor in nature and do not trigger the need for additional review. Under CEQA, additional environmental review is required only if there is a need to evaluate new or more severe significant environmental impacts that will result from changes in the project. There are no new or more severe impacts that will occur as a result of the parcel split or the removal of a single tree.

**Claim:** The Addendum fails to evaluate technical studies and potential project impacts under current CEQA and thresholds and regulatory standards.

**Response:** The Addendum used the most current version of all applicable regulatory guidelines establishing significance thresholds including, but not limited to, the 2024 CEQA Guidelines, and 2022 BAAQMD CEQA Guidelines. In addition, the BAAQMD submitted correspondence to the City stating: "We agree with [the City's] assessment that a convenience store with gas pumps is a typical commercial land use and that the Air District's recommended climate impact thresholds adopted April 2022 can appropriately be used to evaluate this project." The Addendum relied upon the BAAQMD April 2022 thresholds (Addendum, p.20.)

**Claim:** CEQA requires additional subsequent or supplemental review whenever new information shows the project may cause significant environmental effects not previously examined.

**Response:** Once a mitigated negative declaration (MND) has been adopted for a project, an addendum to the MND is proper and an agency may not require preparation of a supplemental EIR or negative declaration unless one of three triggering conditions exist: (1) substantial changes are proposed in the project that will require major revisions to the MND due to new or more severe impacts; (2) substantial changes occur in circumstances under which the project is being undertaken that require major revisions to the MND due to new or more severe impacts; or (3) new information of substantial importance to the project, that was

not known and could not have been known at the time the MND was approved, shows the project will have new or more significant impacts than discussed in the prior MND. (CEQA Guidelines, section 15162.) If these conditions do not exist, an addendum is proper.

Pursuant to CEQA, a two-step standard of review applies when the original environmental document adopted for a project was a MND and a change to the project is proposed.

When the environmental impacts of a proposed change to a project were previously analyzed in the prior MND, no additional review is required, and an addendum is proper because CEQA review does not extend to "environmental concerns laid to rest in the original analysis." (*Friends of the College of San Mateo Gardens v. San Mateo County Community College* (2016) 1 Cal.5th 937, 949.)

The substantial evidence standard of review applies to the agency's determination that additional review is not required. This standard of review is very deferential to the City. When the environmental impacts of a proposed change to a project were not previously examined in the prior MND, the standard of review for an addendum to the MND is whether there is substantial evidence in the record that changes to the project might have a significant environmental impact not previously considered. (*Id.* at p. 959.) If there is substantial evidence in the record to support a fair argument that significant impacts might occur, and those impacts cannot be mitigated or avoided, the impacts must be addressed in a subsequent or supplemental EIR. (*Id.*, at p. 958.)

The proposed Elm Tree project is almost identical to the project proposed in 2013. There have been no studies or other documents constituting substantial evidence to support a fair argument that the project might have a significant environmental impact not previously considered in the 2013 MND.

**Claim:** The revised traffic analysis, air quality and GHG modeling and Health Risk Assessment prepared for the project constitute "significant new information" and an Addendum is not proper where the prior environmental document did not already address newly emerging issues.

**Response:** Under CEQA, "new information" triggers the need for additional analysis only if the information is of "substantial importance" to the project, was not known and could not have been known at the time the previous MND was adopted, and shows the project will have one or more significant effects not discussed in the prior MND, or that project-related significant impacts previously examined will be substantially more severe than shown in the prior MND. (CEQA Guidelines section 15162(a)(3).)

The revised traffic analysis, air quality and GHG modeling and Health Risk Assessment prepared for the project analyze potential impacts under the current CEQA thresholds and conclude the project will not cause new or more severe significant impacts, thus no additional analysis is required. (Addendum, pp. 31-43.) Greenhouse gas emissions were analyzed in the 2013 MND (MND, p. 26), as was traffic and air quality (MND, pp. 43-44,

14-15 and 26-28.) Moreover, case law establishes that changes in the CEQA Guidelines do not constitute "new information" that would trigger additional CEQA review so long as the underlying environmental issue was understood at the time of the original CEQA review. (*Olen Properties v. City of Newport Beach* (2023) 93 Cal.App.5th 270, 280-81.) For example, recent changes in CEQA Guidelines regarding climate change/GHG emissions and VMT do not constitute "new information," as the science has been around for years and was commonly included in air quality analyses. (See, e.g., *CREED v. San Diego* (2011) 196 Cal.App.4th 515; *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1320; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788; *Olen Properties, supra*, 93 Cal.App.5th at p. 281; *Citizens for Responsible Equitable Env't'l Dev. v City of San Diego* (2011) 196 CA4th 515, 531.)

**Claim:** The Addendum fails to analyze water quality impacts, traffic safety impacts, air quality and GHG emissions and toxic air contaminants.

**Response:** The Addendum properly analyzes water quality impacts (pp.25-26), traffic impacts (pp.42-44), air quality, GHG emissions and toxic air contaminants (pp. 31-42). These impact areas were also addressed in the MND. (See MND, pp. 33-34, 43-44, 14-15 and 26-28.) See also Elm Tree Station Health Risk Assessment; Traffic impact study; Addendum to traffic impact report, Greenhouse Gas emissions memo, climate action plan checklist, Army Corps verification. Regarding collisions and traffic safety impacts, the 2013 MND analyzed these potential impacts and concluded the impacts were less than significant (MND, pp. 43-44); the Addendum confirmed the 2013 analysis and conclusion (Addendum, p. 43.) Regarding toxic air contaminants, the Health Risk assessment prepared for the project analyzed cumulative impacts and followed the updated BAAQMD guidance which requires analysis of cumulative sources within 1,000 feet of the project. (HRA, pp. 14-15.) The Air District Screening tool available at the time of the Health Risk Assessment report preparation did not identify sources within a 1,000 ft. from the property boundaries. The sources indicated in the updated Air District screening tool database (i.e., 2022 database) are indicated on the map tool but the location of the actual sources are outside of 1,000 ft. In addition, both sources present very low risk that do not contribute to cumulative significant risks. The risks reported by BAAQMD are at the boundary of the facilities. At the boundaries, the cancer risk is less than 0.1 per million and if adjusted for distance (over 1,00 ft.) they would reasonably be 0.

**Claim:** The Applicant's appeal letter ignores new information including scientific studies on benzene emissions, new scientific understanding of risks from fossil fuel infrastructure, UST lead and explosion incidents, and the City's goal of eliminating traffic injuries.

**Response:** New scientific studies are released regularly worldwide on a variety of topics, including risks associated with fossil fuels. Under CEQA, "new information" triggers the need for additional analysis only if the information is of "substantial importance" to the project, was not known and could not have been known at the time the previous negative declaration was adopted, and shows the project will have one or more

significant effects not discussed in the prior MND, or that project-related significant impacts previously examined will be substantially more severe than shown in the prior MND. (CEQA Guidelines section 15162(a)(3).) The documents cited by the commenter are general in nature and do not pertain to the project at issue. The Addendum properly analyzes all potential project-related environmental impacts and the existence of general scientific studies relating to USTs and vapor intrusion does not require additional analysis. (See, e.g., *Moss v. County of Humboldt* (2008) 162 Cal.App.4<sup>th</sup> 1041, holding that a statement in the record about some level of increased contamination in a creek did not show that there would be a new significant impact, and thus failed to demonstrate the new information was "of substantial importance".)

**Claim:** Since 2013, CEQA has clarified the need for robust GHG and climate change impacts.

**Response:** The MND included analysis of climate change (MND, p. 26) and the Addendum includes a detailed analysis of GHG and climate change impacts and concludes the impacts are less than significant. (Addendum, pp. 39-42.)

## **Section B. Foreseeable Liability for Groundwater Contamination**

Claims and responses included herein.

## **Section C. Inconsistency with the Policies Enacted in the Gas Station Prohibition Ordinance**

**Claim:** The Council cannot disregard the legislative policy adopted in the 2022 gas station ban.

**Response:** The gas station ban was focused on the cumulative effects of gas stations city-wide and did not include any project-specific analysis. In addition, the Council specifically exempted the Elm Tree project from the ban and allowed the project to move forward in the entitlement process. The Addendum for the proposed Elm Tree project includes project-specific environmental analysis of potential impacts to all resource areas and concludes the impact will be less than significant. Under CEQA, "changed circumstances" will trigger additional analysis only if the changes will result in new or more severe significant environmental impacts requiring major revisions to the prior MND. (CEQA Guidelines section 15162(a)(2).) The focus of the inquiry is not on the nature, scope or extent of the changed circumstances but rather on whether the changed circumstances will lead to new significant project impacts that were not previously considered. The Council's enactment of the gas station ban does not result in new significant impacts that were not previously considered in the prior MND.