

Appeal of “Common Sense” CEQA Exemption Determination

Amazon (Whole Foods) Market
2675 Geary Boulevard

Appellants:
Julie Fisher, Tony Vargas, and UFCW Local 5

Mark R. Wolfe
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San Francisco, CA 94104

Attorney for Appellant

Legal Standard for the “Common Sense” Exemption Determination [CEQA Guidelines, sec. 15061(b)]:

15061. REVIEW FOR EXEMPTION

- (a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.
- (b) A project is exempt from CEQA if:
 - (1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).
 - (2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.
 - (3) The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. **Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.**
 - (4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).
 - (5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

The Affected Environment

- The Project site and vicinity are within an “Air Pollution Exposure Zone” per SF Health Code sec. 3806
- Air pollutants: Toxic Air Contaminants (TACs) / Diesel Particulate Matter (DPM) from Delivery Trucks/Passenger vehicles [Source: BAAQMD]

SEC. 3806. AIR POLLUTANT EXPOSURE ZONE AND AIR POLLUTANT EXPOSURE ZONE MAP.

(a) The Director shall create an Air Pollutant Exposure Zone Map according to Rules and Regulations as authorized by Section 3809. The Air Pollutant Exposure Zone Map shall depict all locations in the City where the estimated cumulative PM_{2.5} concentration is greater than 10 µg/m³ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 100 in a million. Additionally, the Air Pollutant Exposure Zone Map shall include all locations within 500 feet of any Freeway, if those locations were not otherwise captured by modeling estimates. Within Health Vulnerable Locations, the Air Pollutant Exposure Zone Map shall depict all locations where the estimated cumulative PM_{2.5} concentration is greater than 9 µg/m³ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 90 in a million. The Director shall update the Air Pollutant Exposure Zone Map to identify new sources, updated pollutant standards, additional pollutants and standards for those pollutants, and updated methodologies in accordance with Section 3809 and the accompanying Rules and Regulations for this Article 38.

The Affected Environment

San Francisco Property Information Map Epiphany Center - Mt. St. Joseph's/St. Elizabeth

100 MASONIC AVE

Environmental Information

The two sections below list environmental monitoring requirements and general environmental topics related to this property.

Report for: **100 MASONIC AVE**

Environmental Monitoring

The following projects on this property require Environmental Monitoring, which may include mitigation measures, improvement measures, and/or [Director Bulletin](#) No. 2 type 3 clean construction priority processing applications. The Environmental Monitoring document can be found as a Related Document in the More Details section of each record below. For questions about a project's environmental monitoring contact cpc.environmentalmonitoring@sfgov.org.

Projects with Monitoring Requirements
Not applicable.

CEQA Information

Under the California Environmental Quality Act (CEQA), certain scopes of work may require additional environmental review. Below you will find property-specific information that may require further review and/or background studies for proposals reviewed by the Planning Department. For projects requiring a [Project Application](#), use the information below to complete the Environmental Evaluation Screening Form (Page 5 and 6). Note that Preservation information is located in the Historic Preservation Tab; Environmental (ENV) projects, active and complete, can be found in the Planning Applications Tab. For questions please contact cpc.epintake@sfgov.org

100-Year Storm Flood Risk Zone
Not applicable.

Air Pollutant Exposure Zone
[Health Code Article 38](#)

Site is located in an area with elevated pollutant concentrations. Sensitive use buildings, as defined in the Applicability section of the Ordinance, must comply with Health Code Article 38.

CEQA Impact: An Environmental Evaluation Application may be required for projects that generate air pollutants.
[Read more about this regulation](#)

Added: 12/7/2014

Map Layers

- 100-Year Storm Flood Risk - [Disclaimer](#)
- Air Pollutant Exposure Zone (2014)
- Air Pollutant Exposure Zone (2020)
- Cortese
- Environmental Monitoring
- Maher Ordinance
- Seismic Hazard Zone - Landslide
- Seismic Hazard Zone - Liquefaction
- Serpentine Rocks
- Slopes of 20% or greater
- Slopes of 25% or greater

“estimated cumulative $PM_{2.5}$ concentration is greater than $10 \mu\text{g}/\text{m}^3$ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 100 in a million”

The Affected Environment

San Francisco Property Information Map

Raoul Wallenberg Traditional High School

40 VEGA ST

Environmental Information

The two sections below list environmental monitoring requirements and general environmental topics related to this property.

Report for: **40 VEGA ST**

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100-Year Storm Flood Risk Zone
Not applicable.

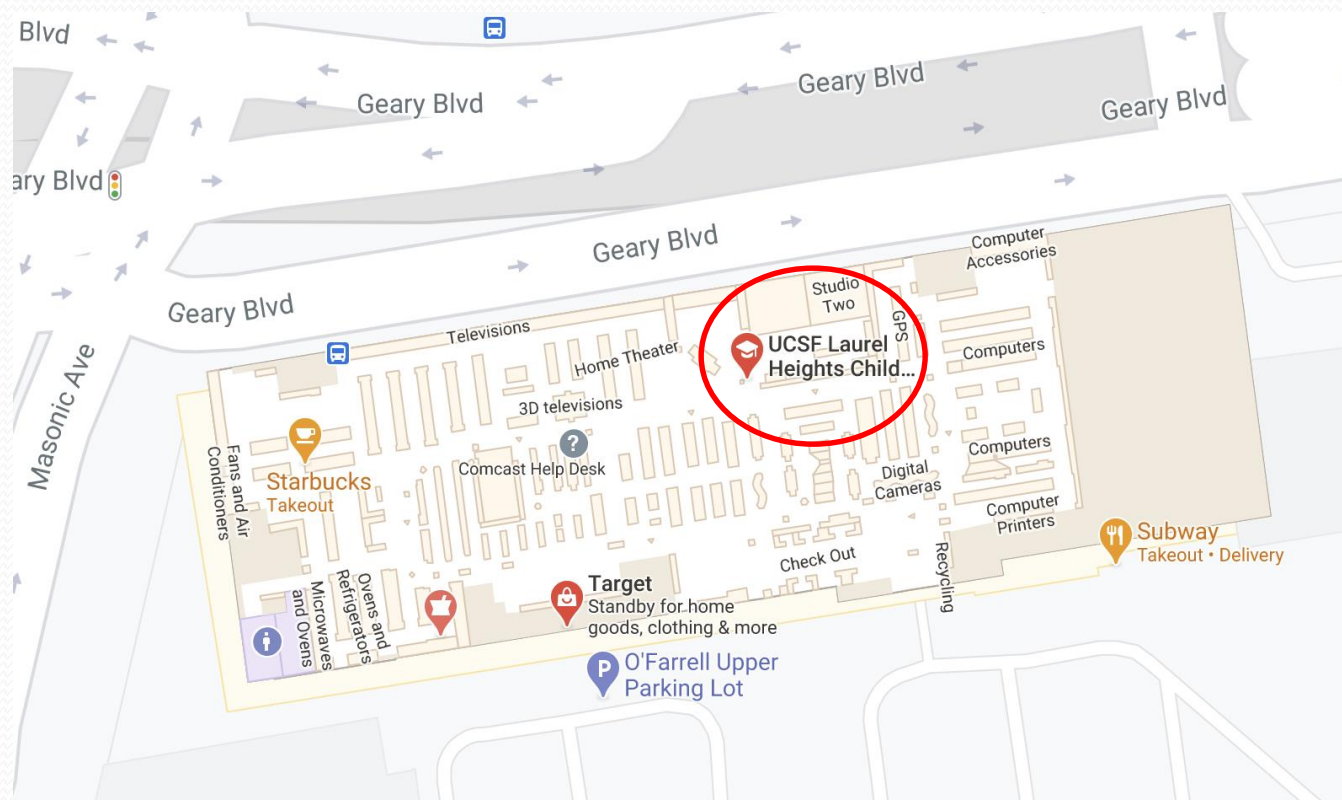
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[Health Code Article 38](#)
Not applicable.

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The Affected Environment



“estimated cumulative $PM_{2.5}$ concentration is greater than $10 \mu\text{g}/\text{m}^3$ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 100 in a million”

The Project

Diesel-powered delivery trucks & TRUs emitting DPM

2675 Geary Blvd

Criteria Air Pollutants

Prior Operations (Best Buy)

Delivery Truck Idling			Trucks	Idle Time	ROG EF	NO _x EF	ROG	NO _x
Truck Type	EMFAC Vehicle Class	Fleet % Diesel	trip/day	min/trip	g/hr	g/hr	ton/yr	ton/yr
four tire	MHDT	100.0%	6	10	0.833	63.257	3.35E-04	2.55E-02
two axle six tire	HHDT	100.0%	6	10	2.324	46.167	9.35E-04	1.86E-02
semi	HHDT	100.0%	2	10	2.324	46.167	3.12E-04	6.19E-03
			= 14	= 140 mins		total	1.58E-03	5.02E-02

New Operations (Whole Foods)

Delivery Truck Idling			Trucks	Idle Time	ROG EF	NO _x EF	ROG	NO _x
Truck Type	EMFAC Vehicle Class	Fleet % Diesel	trip/day	min/trip	g/hr	g/hr	ton/yr	ton/yr
semi	HHDT	100.0%	4	10	2.324	46.167	6.23E-04	1.24E-02
two axle six tire	HHDT	100.0%	4	10	2.324	46.167	6.23E-04	1.24E-02
bobtail or van	MHDT	100.0%	15	10	0.833	63.257	8.38E-04	6.36E-02
			= 23	= 230 mins		total	2.09E-03	8.84E-02

Delivery Truck TRU			Trucks	Run Time	ROG EF	NO _x EF	ROG	NO _x
Truck Type	EMFAC Vehicle Class	Fleet % Diesel	trip/day	min/trip	g/hr	g/hr	ton/yr	ton/yr
semi	HHDT	100.0%	4	60	5.973	54.752	9.61E-03	8.81E-02
two axle six tire	HHDT	100.0%	4	30	3.405	33.044	2.74E-03	2.66E-02
bobtail or van	MHDT	100.0%	15	30	2.173	21.092	6.56E-03	6.36E-02
				= 810 mins		total	1.89E-02	1.78E-01

Source: Applicant's Consultant (ESA)

Customer Vehicles – Former Best Buy

4.2 Trip Summary Information

Land Use	Average Daily Trip Rate			Unmitigated	Mitigated
	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Electronic Superstore	2,603.31	2,603.31	2603.31	2,590,235	2,590,235
Total	2,603.31	2,603.31	2,603.31	2,590,235	2,590,235

Customer Vehicles – Amazon/WholeFoods

4.2 Trip Summary Information

Land Use	Average Daily Trip Rate			Unmitigated	Mitigated
	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Supermarket	5,909.47	10,264.70	9620.23	8,032,349	8,032,349
Total	5,909.47	10,264.70	9,620.23	8,032,349	8,032,349

Diesel Truck Deliveries / TRU Idling Times (DPM emissions)

	Former Best Buy (2017)	Amazon/Whole Foods
Total Trucks/Day	14	23
TRUs	0	23
Total Diesel Engine Idle Time	140 minutes/day	810 minutes/day

Customer Vehicle trips/VMT (+ associated air pollutant emissions)

	Former Best Buy (2017)	Amazon/Whole Foods
Weekday trips	2,603	5,909
Saturday trips	2,603	10,265
Sunday trips	2,603	9,620
Annual VMT	2,590,235	8,032,349

Source: Applicant's Consultant (ESA)

Best Buy – CLOSED since 2017

	Actual conditions (2020)	Amazon/Whole Foods
Total Trucks/Day	0	23
TRUs	0	23
Total Diesel Engine Idle Time	0 minutes/day	810 minutes/day

	Actual conditions (2017)	Amazon/Whole Foods
Weekday trips	0	5,909
Saturday trips	0	10,265
Sunday trips	0	9,620
Annual VMT	0	8,032,349

Can we say “with certainty” that there is “no possibility” that emissions from Whole Foods delivery trucks/customer vehicles could increase the already elevated cancer risk in the APEZ?

Existing cancer risk – **at least** 100 excess cancers/million per APEZ designation

Added cancer risk - ?

Environmental Permitting Specialists (Sacramento)

Ray Kapahi

Senior Air Quality
Consulting Engineer



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Practice Areas

- Air Quality Permitting
- Odor Investigation and Control
- Health Risk Assessment

EXPERIENCE

Over 30 years of experience in analyzing air quality and odor impacts, permitting of stationary sources, and preparation of environmental impact documents. Mr. Kapahi assists a broad range of clients and assists them to identify and meet their regulatory obligations.

The scope of his experience includes siting of new landfills, waste to energy plants, obtaining conditional use permits from City and County Governments for new projects or expansion of existing projects. Specific experience and skills include preparation of emission inventories, analysis and measurements of odors, dispersion modeling, oversight of air quality monitoring, analysis of impacts to public health, responding to public comments, and appearing before City and County Planning Boards and Commissions as an expert witness on behalf of clients.

Following approvals for new facilities or expansion of existing facilities, Mr. Kapahi continues to work with clients to ensure on-going compliance.

Fundamental Errors in Applicant's Oct. 30 screening level analysis:

- **Omits TAC emissions from the thousands of daily customer vehicle trips**
 - CARB identifies TACs from passenger vehicles as the 3rd, 4th, 5th, and 7th largest sources of inhalation cancer risk in California
 - City's own citywide health risk assessment, cited by Amazon, includes TACs from gasoline-powered vehicles
- **Assumes Best Buy still operating, in effort to show relatively small incremental contribution**
 - Best Buy closed for 3 + years.
 - CEQA requires "baseline conditions" be existing conditions at time environmental review is commenced, not some hypothetical condition that no longer exists. CEQA Guidelines, sec. 15125(a).

EPS's Two Analyses:

1. October 30, 2020 screening level analysis shows significant health impacts:

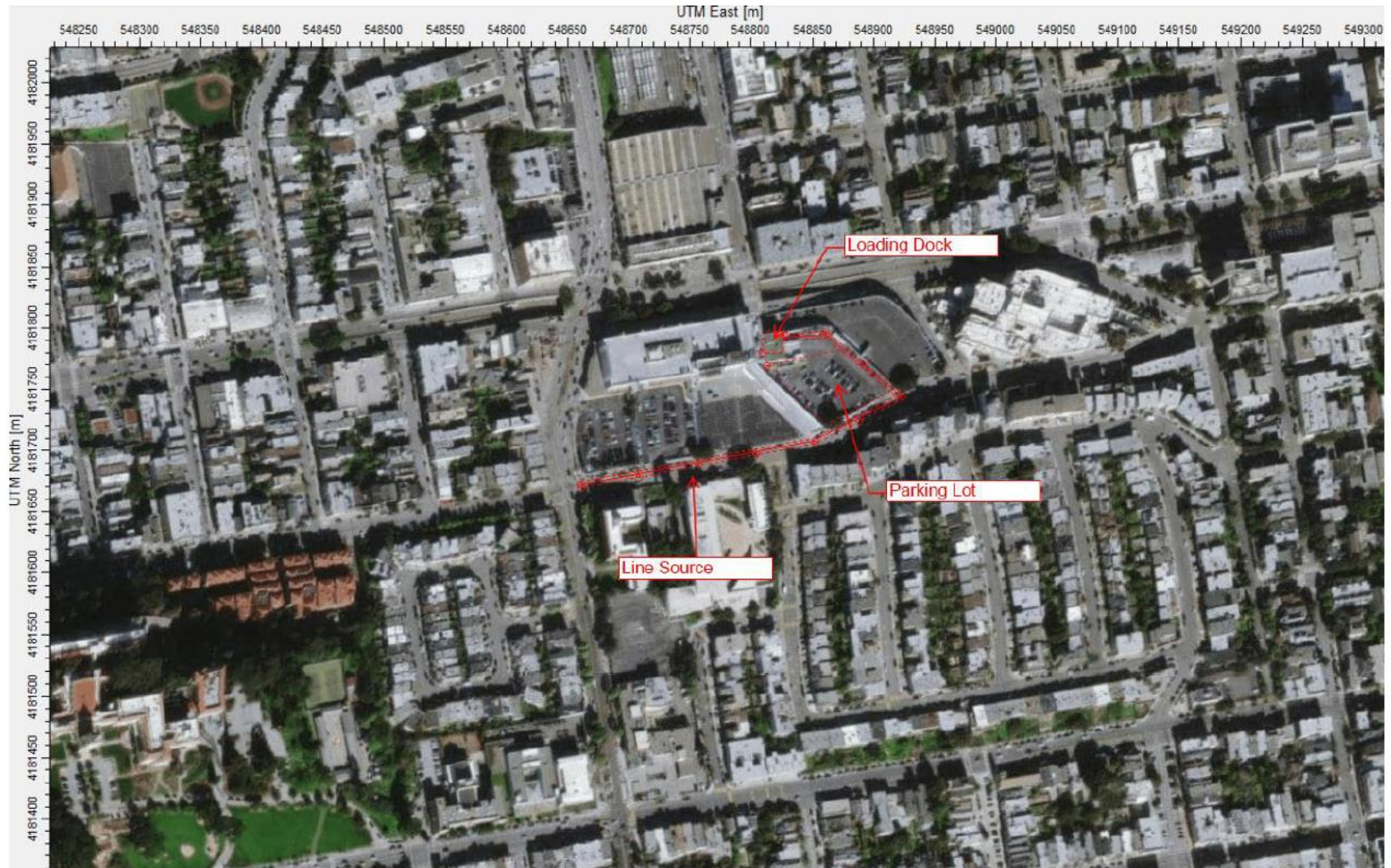
- Cancer risk from the Project by itself would very likely exceed the BAAQMD threshold of significance of 10 excess cancers per million population
- Project is in APEZ, an area in which BAAQMD and the City have identified an existing significant cumulative impact from all TAC sources, where existing risk is over 100 excess cancers per million

2. November 13, 2020 refined Health Risk Assessment corrects error's in Applicant's analysis, using same methodology.

- Assessment based on emissions from delivery trucks and customer/light duty vehicles**
 - First without subtracting Best Buy trips → significant impact
 - Second after subtracting Best Buy trips → significant impact

**Modeling assumptions, output files in EPS Technical Memo

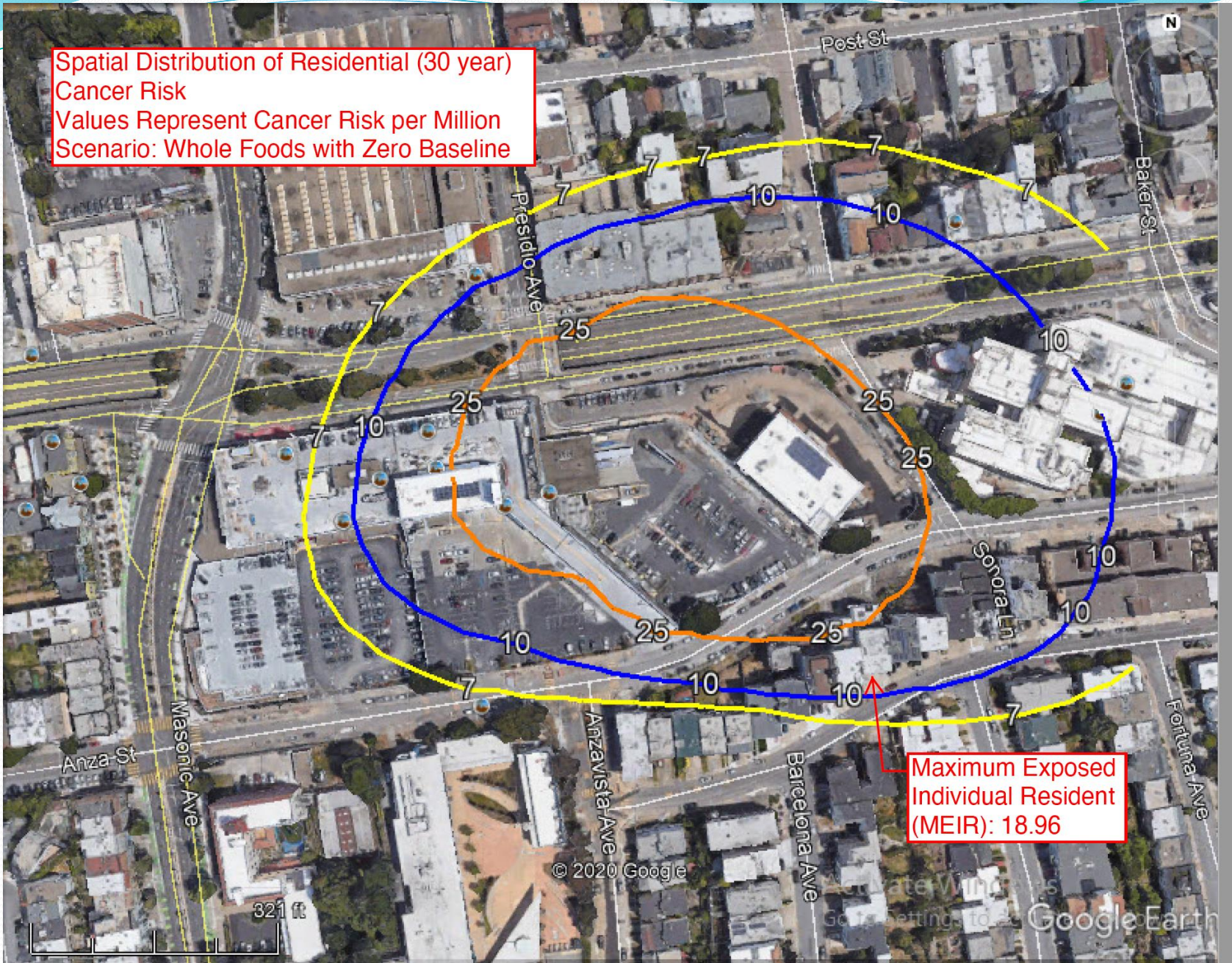
Emission Sources Modeled



Findings

- Increase health risk significant **even if baseline conditions assume Best Buy** still operating.
 - Cancer risks to receptors on O'Farrell increase by over 10 excess cancers per million
 - Cancer risk to “maximally exposed individual receptor” increase by over 18 excess cancers per million
 - Cancer risk to on-site childcare center, workers, equates to lifetime increase of over 25 excess cancers per million
- Regardless of baseline, project contributes to a significant existing **cumulative** impact under CEQA
 - APEZ burdened with more than 100 excess cancers, any additional contribution is significant.
 - Under BAAQMD CEQA Guidelines, significant cumulative impact

Spatial Distribution of Residential (30 year)
Cancer Risk
Values Represent Cancer Risk per Million
Scenario: Whole Foods with Zero Baseline



Maximum Exposed
Individual Resident
(MEIR): 18.96

Spatial Distribution of Residential
(30 year) Cancer Risk.
Values Represent Cancer Risk per
Million
Scenario: Whole Foods Minus
Emissions from Best Buy



Conclusion:

Based on foregoing: can we say with certainty that there is no possibility whatsoever that the Amazon/Whole Foods will make the air less healthy for the people in the vicinity?

If there is any doubt or uncertainty, the Project does not qualify for the “common sense” exception from CEQA.

Remedy: Order an initial study

“Common Sense”

- Area designated APEZ when Target and Best Buy were both in operation.
 - Neighbors suffering excess cancer risk > 100/million
- Best Buy Closes in 2017
 - Air almost certainly cleaner; cancer risk at least nominally reduced
- Now, applicant seeks not only to bring back that earlier risk, but to make it significantly worse.
- To find this Project exempt from CEQA based on “common sense” works a disservice to impacted residents.