

The Brown Act: Responses to CDT Questions

November 10, 2020

Overarching Questions

1. What is the specific process and timeline for BAAQMD Board Appointment of a R/SP CERP Steering Committee?

Response: This would be a four-step process:

- i. December 2020: The EA&I Committee would consider the request from the CDT and make a recommendation to the full Board
 - ii. January 2021: The full Board would act on the recommendation from the EA&I Committee
 - iii. January 2021: The Personnel Committee would select the Steering Committee and make a recommendation to the full Board
 - iv. February 2021: The full board would appoint the Steering Committee
 - v. Once a Community Steering Committee is appointed the Board may want to approve the Charter
2. To what extent will the BAAQMD Board, and their respective Committees, consider recommendations from the Community Design Team (CDT), regarding a slate of recommended Steering Committee members?

Response: This will depend on the Committees and the Board. While the Committee would likely give deference to the CDT recommendation, we cannot guarantee the slate of recommended members will be selected or appointed.

3. How would the Chair and Vice Chair of the Steering Committee be Selected?

Response: We are assuming that the Steering Committee, once formed, can select a Chair and Vice Chair. But the Board may want to weigh in on this as well for a Board-appointed Brown Act Committee

4. Could the Steering Committee Adopt Pieces of the Brown Act into their Charter?

Response: Yes, the Steering Committee can incorporate pieces of the Brown Act into the Charter. The Steering Committee would be responsible for enforcing the Charter including the Brown Act pieces. The Steering Committee can choose to include enforcement procedures in the Charter.

5. What can be Included in the Steering Committee Charter?

Response: This will largely be up to the Steering Committee, within reason. Specifically, the Charter could:

- i. Include pieces of the Brown Act.
 - ii. Reflect the partnership between the Air District and Community,
 - iii. Include community facilitation, budget transparency, agenda-setting, and Rosenberg's Rules.
6. Will the Approved Steering Committee Application and Conflict of Interest Form Suffice for the Steering Committee, if it is a Legal Brown Act Committee?

Response: The CDT approved application is being used to recruit applicants. Additional information may be requested by the Board or Board Committee to support selection

and appointment. The Conflict of Interest and Financial Disclosure form will likely need to be supplemented by Form 700.

Specific Community Design Team Questions and Concerns

1. Janis Hashe (Wednesday 10/28/20 at 10:26am):

Hi Kristen,

I am fine with Tuesdays in general.

Regarding Point 3: *My main questions have to do with EXACTLY what the procedure would be for selecting members of the Steering Committee if we did decide to authorize the Brown Act. Would they be chosen only from the candidates submitted by the CDT? Or would BAAQMD be able to override these submissions and select their own committee members?*

I am concerned about the section that implies that BAAQMD would also decide how many industry/business members would be represented on the committee.

These points need to be clarified in detail before I would be ready to make a decision on this.

best,

Janis

Response See #2 above, this would largely be up to the respective Committees, and Board.

2. Julie Walsh (Tuesday 10/27/20 at 8:00pm):

Dear Kristin,

The major concern I have and would like clarification about is to ensure that the *CDT actually does the review of the applications and chooses the members of the CERP, and that the CERP chooses the Chair of the CERP.*

Thanks,

Julie

Response: See #2 above, this would largely be up to the respective Committees, and Board.

3. Janet Johnson (Friday 10/30/20 at 5:00pm)

Regarding questions and recommendations on the Brown Act and the Charter:

1. I recommend either: a non-Brown Act Charter that provides for community facilitation, budget transparency, agenda-setting power, Rosenberg's Rules, and Design Team selection of CSC members; or, a Brown Act authorization that doesn't relinquish Design Team authority to select committee members and restrict

industry access to the process, and CSC authority to identify the leadership (chair, vice chair etc.).

2. The Charter should specifically state that the Air District will not use its authority, experience, or programs to impose its will.

3. The Charter needs to reflect a partnership between the Air District and the community and build mechanisms throughout that ensure that the process and products fully reflect this partnership. Communities need to be considered and treated as authors of the products and conveners of the process.

4. The Charter should state that training will be required for anyone seeking participation in the CERP, including but not limited to the Air District, community organizations, residents, and other stakeholders. This will include but is not limited to training in partnership and collaboration development and implicit bias.

Response: n/a, no question posed.

4. Oscar Garcia (Friday 10/30/20 at 5:30pm)

I recommend that ALL aspects of the Brown Act be enacted or none at all. A Brown Act light will defeat the purpose of even following it, and it will lead to confusion among everyone involved.

The charter needs to state that residents of Richmond are favored over non-residents, regardless of employment. This will make it a truly community-led process.

As for the training proposed below, it reminds me that Bias training is needed in the CERP DT. Per the SEEDS model, the similarity and experience bias is making it difficult for the 10 DT members to work together.

Thanks

Response: Yes, the Charter can state that residents are favored over non-residents (for members of the Steering Committee) if this is what the Steering Committee collectively decides.

5. Willie Robinson (Friday 10/30/20 at 6:36pm):

Hi All:

I am just cleared from a very busy day and neglected to respond by end of business to day with my comments on the issue of our recommending that the Community Emission Reduction Plan (CERP) be a Brown Act compliant body. My answer is NO! My reasonings are as follows: 1.) It is my understanding that being Brown Act compliant is very bureaucratic and extends the timely process for community led groups; 2.) I think when elected officials appointed persons from the community, it introduces a level of politics that we need to avoid as much as possible; 3.) When a committee chair is appointed by an elected body, based upon my experiences, it usually dilutes the grassroots community involvements; and finally, 4.) I think we need a third party

facilitator who will be independent, who will schedule meetings, take notes and track the group's progress, in a timely manner. As a volunteer, this work is enormous, and with other commitments, I know I would not be able to commit the time or the energy to fulfill any role that would require doing any of those tasks.

As for the other matter of meeting time, I took the Doodle Poll and registered the day that works best for me.

Best Regards,

Willie

Response: n/a, no question posed.

6. Matt Holmes (Friday 10/30/20 at 7:04pm):

I find myself being forced him to submit comments on short notice with sweeping ramifications once again. I don't think this is how this process was intended to work.

This demand for this type of turn around without deliberation or even an education process further confirms my opinion that we need to push for a brown act status (or equally rigorous semblance of that status) due to: the lack of transparency around agenda setting; the absence of deliberation and democratic processes within the design team; and of course the peculiar phenomenon of minority rule that we experienced for nearly 7 months of the design team process that nearly saddled us with the same dynamic that we experienced in the community air monitoring planning process. Specifically voting members of a community leadership body who failed to disclose their obvious conflicts of interest and whom the facilitator and the governing agency failed to identify and hold accountable.

Now that there's some semblance of a democratic process within the design team phase, I can only hope that the ensuing steering committee can continue this practice and be about the people's business with alacrity. Sadly I think that in order to protect that hope we need to use every legal instrument at our disposal to make that a reality.

Considering this, I think it's reasonable to ask for either a modified Brown Act dynamic or a rigorous charter that provides the desired Brown act protections. Unfortunately, I think that's a process and a conversation that can't be tucked neatly into a convenient agenda.

I think if there are elements of the brown act, as the table suggests, which require us to submit the community leadership process to the board of the Bay Area Air District that standard will simply need to be modified. Same with the leadership appointment phantom that's been floated. I have no problem with collecting community applicants and having them go through a personnel board and an equity board. That seems reasonable to me. The appointment of anyone who doesn't come through that process however would be entirely unacceptable. Never mind the insinuation that historic Brown act requires impacted parties to have a seat at the table. There's no requirement that any emitter should be involved in the community steering committee led emissions

and exposure reduction. This notion that polluting industries get to vote on how to hit themselves in the pocket is THE cartoon example of a conflict of interest that this legislation was specifically designed to thwart.

It's understandable that Air District staff would have insufficient experience with this considering the novelty of the task set before us.

You all have my sympathies.

Fortunately, this is not business as usual. If empowering a community to define its own pollution burdens were routine we wouldn't have needed new legislation to protect chronically polluted communities in the first place. When new laws are passed they inevitably challenge and supplant old laws and outdated practices.

I think the implicit threat that submitting to a rigorous Brown Act process would abdicate any of the community's authority to the air district board is a specious and contrived concern that shouldn't deter anyone from demanding the rigorous process we clearly need.

The new legislation changes everything, including the air district's own Brown Act policy.

As for the request for additional training? I don't think the process should be encumbered with any unnecessary rituals that don't get at the heart of this legislation which is to reduce emissions and exposure in chronically polluted communities.

For what it's worth.

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Response: n/a, no question posed.

7. Linda Whitmore (Friday 10/30/20 at 9:00pm):

CERP CDT

My schedule was very cramped and I did not have time to really go through all the points of the Brown Act. The turn around time was not realistic.

But I would like to second a few points that Willie mentioned:

1. if the steering committee becomes too bureaucratic the time lines will be extended....we are already off schedule and months behind
2. this committee was suppose to be a community group determining community concerns and outcomes..... *will the Brown Act change the grassroots component?*
3. I think that an outside facilitator is necessary to help with agenda settings, contacts, announcements and keeping the meeting structured and operating smoothly. I think an Emissions Co-Lead could represent the steering committee to work with the facilitator and Air Quality staff similar to the Monitoring Steering Committee.

Linda

Response: The Brown Act adoption could potentially change the grassroots component of the Steering Committee.

DRAFT