BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

Brown Act Selected Topics

Board of Directors Special Meeting
May 5, 2021

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Outcome

Provide Overview of Selected Brown Act Topics

Requested Action

None, Informational Only

Outline

- Brown Act Fundamentals
- Relationship to Parliamentary Procedure
- Legislative Bodies under the Brown Act
- Brown Act Meetings
- Brown Act Meeting Exceptions
- Virtual Meetings
- Voting
- Public Comment

Brown Act Fundamentals

- The Ralph M. Brown Act is codified in California Government Code sections 54950, et seq.

- Purposes of the Brown Act include transparency in decision making and public participation in local government

- All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, unless an exception applies (Govt. Code § 54953)

- Brown Act purpose is broad; exceptions are narrow

Relationship to Parliamentary Procedure

- The Brown Act contains legal requirements for open meetings and public access, including some applicable procedural requirements

- Parliamentary procedure (or "law") is intended to ensure efficient and fair meeting conduct

  - Some elements of parliamentary procedure can be found in the Air District's Administrative Code (e.g., quorum for committees is 5 members) and other elements in publications like Robert's Rules of Order

- If there is a conflict, the legal (Brown Act) requirements govern

  - Example: Voting - Under Robert's Rules elections of officers are typically by secret ballot; the Brown Act, however, prohibits any vote by secret ballot

Legislative Bodies Under the Brown Act

- The following are considered "legislative bodies" under the Brown Act, among others (Govt. Code § 54952(a) and (b)):

  - The "Governing body of a local agency" or any other local body created by state or federal statute

  - Standing committees of a legislative body

  - Bodies created and/or appointed by formal action of a legislative body

- Newly elected members of the governing body even before they assume office must comply with the Brown Act (Govt. Code § 54952.1)

Brown Act Meetings

- A "meeting" is any gathering of a majority of the members of a legislative body at the same time and location to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body (Govt. Code, § 54952.2)

- Includes meetings by teleconference, or communications by other electronic means (Govt. Code, §§ 54952.2, 54953)

- Be careful not to engage in "serial meetings" and "meetings" which may occur through use of email, communications devices (e.g., texting), and social media

Brown Act Meeting Exceptions

- Individual member contacts or conversations between member and another person
  - Be careful to avoid serial meetings

- Majority of members at open and publicized conferences, meeting of another organization, or another legislative body of another agency
  - Be careful not to discuss agency business.

- Majority of members at a purely social or ceremonial occasion
  - Be careful not to discuss agency business
  - Be wary of public perception of improper discussions

    (Govt. Code, § 54952.2)

Virtual Meetings Under the Brown Act

- *In ordinary times,* the Brown Act provides that meetings may be conducted by teleconferencing (any electronic audio or video connection) under the following conditions:

  - Agendas must be posted at teleconference locations at least 72 hours before the meeting specifying all teleconference locations

  - There must be public access to each teleconference location

  - Public opportunity to speak must be provided at each teleconference location

  - All votes during teleconference meetings must be taken by roll call

    (Govt. Code, § 54953 (b))

Voting

- Legislative bodies must publicly report (1) any action taken and (2) the vote or abstention on that action of each member present for the action (Govt. Code, § 54953(c)(2))

- Action by secret ballot is prohibited (Govt. Code § 54953(c)(1))

- If votes are not taken by roll call, the clerk or chair should read aloud the name of each member with his/her vote or abstention in open session

Public Comment

- Agendas must provide opportunity for public comment:
    - (1) on each item on the agenda at or before the time that it is taken up by the body; and
    - (2) on any topic within the agency's subject matter jurisdiction (i.e., on matters not on the agenda for the meeting)

        (Govt. Code § 54954.3(a))

- Responses to public comment on such matters is limited. With narrow and limited exceptions, discussion and action on matters not on the agenda is prohibited. Members may only:
    - Briefly respond to statements/questions from the public
    - Ask a question for clarification
    - Make a brief announcement
    - Make a brief report on his or her activities
    - Provide a reference to staff or other sources for factual information
    - Request staff report back at a later meeting
    - Direct staff to place the matter on a future agenda

        (Govt. Code, § 54954.2(a)(3))

Public Comment (cont.)

- "The legislative body of a local agency may adopt reasonable regulations on public comment, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker." (Govt. Code § 54954.3(b)(1))

- "The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body." However, the Brown Act does not "confer any privilege or protection for expression beyond that otherwise provided by law." (Govt. Code, § 54954.3(c))

Feedback Requested/Prompt

None. Questions?

Public Meeting Best Practices

Board of Directors Special Meeting
May 5, 2021

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Board Secretary
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Outcome

Review and Discuss Best Practices for Public Meetings

Outline

- Consistency vs. Rigidity

- The Public Comment

- The Board Discussion

- Board Member Conduct

Listen, Learn, Engage, Employ

Important Notes

- This presentation is in no way intended to correct, reprimand, or call attention to the practices of any Board Member, Staff Member, or member of the public.

- Each public agency has its own rules, procedures, practices, and norms for running a public meeting. These tips are intended to develop norms for stakeholders and participants at Bay Area Air Quality Management District meetings.

- By consistently engaging in these baseline practices, we improve the efficacy and professionalism of the agency.

Consistency vs. Rigidity

- One of the most important ingredients for running an effective public meeting involves understanding the difference between consistency and rigidity.

- Consistency, both within and between committees, allows the public to have a reasonable expectation about the flow of the meeting, the process unfolding in the meeting, and outcomes. This allows for flexibility that is predictable and helpful to the running of the public meeting.

- Rigidity is the extreme version of consistency: it involves allowing no space for variation or accommodation.

Consistency vs. Rigidity (cont.)

- Examples:
  - We typically allow 3 minutes of public comment at our meetings, but the Chair retains the discretion to alter the amount of comment time to ensure there is enough time to hear all public stakeholders and to allow for a robust discussion/debate of the substantive issues.
  - We typically take items in the order they appear on an agenda, but we may take them out of order to get important business done or to accommodate a guest speaker.
  - 🔑 Communication + Transparency – Telling the public, stakeholders, staff and Directors what you are doing, why you are doing it, as early as possible, reduces opportunities for conflict.

Structure of an Agenda Item

- Presentation
  - Provided by Staff, a Board or Community Member, this portion is intended to inform all stakeholders on the action before the Board.
- Clarifying Questions
  - This is an opportunity to elicit additional detail about an item in the presentation through brief, succinct questions.
- The Public Comment
  - The public is welcome to provide their input; this is a one-directional process.
- The Board Discussion
  - After public comment has ended, this is the opportunity for debate.
- The Action
  - Typically, a Motion is made and seconded, and a vote is taken.

The Public Comment

- The Public Comment period is just *one* opportunity for the public to be heard.

- Members of the public are encouraged to communicate their thoughts, views, objections to, support for, or questions about agenda items in writing in advance of the meeting.

- The oral comment period at meetings is designed to respond to things mentioned during the presentation, to highlight aspects of a written public comment, or to suggest questions or actions they would like the Board to consider during discussion.

- The role of Board Members during the public comment is to be attentive, listen, take notes, and identify issues raised by public stakeholders for the subsequent discussion and debate.

The Public Comment (cont.)

- Having a successful exchange with the public comes from creating a culture of mutual respect for all participants.

- Board Members should be cognizant of how they identify and address public speakers.
  - Example: Referring to someone as "Mister" vs. "Doctor" or using a gender-designating term like "Ms." or "Sir" for a person you don't know.
  - Tip: Public Speakers in the Zoom era can and should adjust their screen name to the designation they prefer.

- Public Speakers should address their comments to the entire Board – not individual staff or Members of the Board.

- 🔑 Patience – We need to learn but also give space to grow.

The Public Comment (cont.)

- Content vs. Time or Manner Restrictions
- Courts have repeatedly held that public speakers have a First Amendment right to express themselves in public forums, such as the public meetings of government agencies. The *content* of a speakers' comments are constitutionally protected, with very few exceptions.
  - Board Members cannot censor lawful free speech, even if distasteful.
- The law allows for limits on the *time* and/or *manner* in which a person's comments are presented.
  - Time and manner limits are legal as long as they are consistent.
  - Visual aids at comment must go through the Chair. The Board should develop a policy/guidelines for that process.

The Board Discussion

- Prior to the public comment, the Chair may, at their discretion, allow directors to ask brief, clarifying questions.

  - A clarifying question is one that seeks to clarify understanding of or elicit a detail from the staff presentation that was not obvious or available.

  - A clarifying question that is preceded or followed by declaratory statements, opinions, positions, or other information that could just as easily be shared during the Board Discussion can be disrespectful to the public and their role in the process.

- When the public comment has ended, the Chair brings the item back for discussion and debate and may do brief follow-up on public comment.

The Board Discussion (cont.)

- With limited exception, the Chair should call on all other Members of the body to give remarks before giving their own.

    - Examples of Limited Exceptions: The agenda item was introduced by the Chair, or the matter involves an issue of significant public importance where the Chair opening with a statement on behalf of the agency is necessary or important.

- The Chair should not call on a Member to speak on an agenda item for a second time until all Members have had a first opportunity to speak.

The Board Discussion / Member Conduct

- Board Members should familiarize themselves with the Rules of Procedure as it relates to participating in Board discussions.

- When the Chair recognizes a Member, *only that Member* may speak unless/until the Chair has recognized someone else, or if there is a properly made and accepted *Point of Order*.

- Interrupting another Member is unprofessional, inappropriate, and disrespectful to both the Chair and the Member who has been recognized by the Chair.

- Board Members should be conscientious of how much space they are taking during discussion and balance accordingly.

Board Member Conduct

- The 🔑🔑 to Healthy Meetings
- 🔑 Treat all other meeting participants with respect
- 🔑 Wait to be recognized when speaking
- 🔑 When speaking, recognize the importance of other voices
- 🔑 Consider how to express your own point of view instead of opposing or demeaning another person's opinion/perspective
- 🔑 When making examples, use personal experience instead of projecting – others may not see their circumstances as you do
- 🔑 Greet, welcome, invite, and thank people

Feedback Requested/Prompt

Questions and Discussion

Wildfire Season Preview

Board of Directors Special Meeting
May 5, 2021

Ranyee Chiang, Ph.D.

Director of Meteorology and Measurement

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Presentation Outcome

- Preview the 2021 wildfire season

- Understand Air District role during wildfire events

- Overview of resources to inform the public before and during wildfire events

Presentation Outline

- 2021 Fire Season Outlook

- Air District role during wildfires

  - Monitoring

  - Forecasting

  - Communications

- Air quality resources

- Wildfire Air Quality Response Program

  - Reducing wildfire risk
  - Protecting indoor air quality

Presentation Requested Action

- None – informational presentation.

Wildfires in California Have Intensified

Five of these fires were
burning simultaneously in 2020

San Francisco
30,000 acres

Cedar ('03)
La Brea ('09)
Zaca ('07)
Station ('09)
McNally ('02)
Basin Complex ('08)
Simi ('03)
Old ('03)
Day ('06)
Witch ('07)

Biggest wildfires, 2001-10
1.6 million acres burned

North Complex ('20)
264,374 acres

SCU Lightning Complex ('20)
396,624 acres

Creek ('20)
212,744 acres

Rim ('13)

August Complex ('20)
788,880 acres

Rush ('12)

Carr ('18)

LNU Lightning Complex ('20)
363,220 acres

Mendocino Complex ('18)

Thomas ('17)
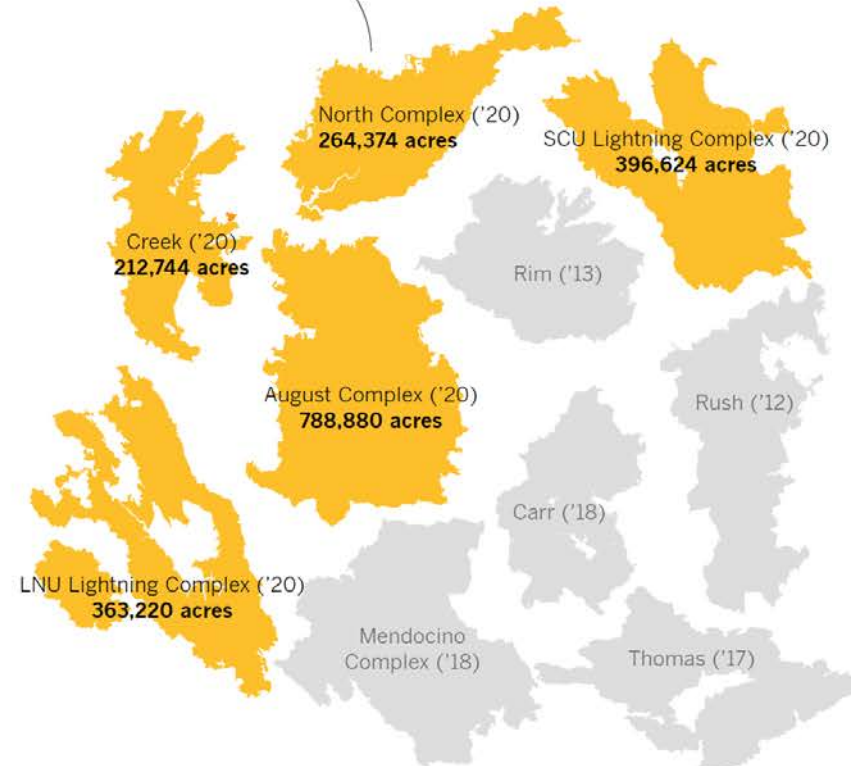
Biggest wildfires, 2011-20
3.5 million acres burned

Source: https://www.latimes.com/projects/california-fires-damage-climate-change-analysis/

2021 Fire Season Outlook

Percent of Average Precipitation (%)
7/1/2020 – 4/10/2021

Generated 4/11/2021 at WRCC using provisional data.
NOAA Regional Climate Centers

25   50   70   80   90   100   110   120   130   150   175
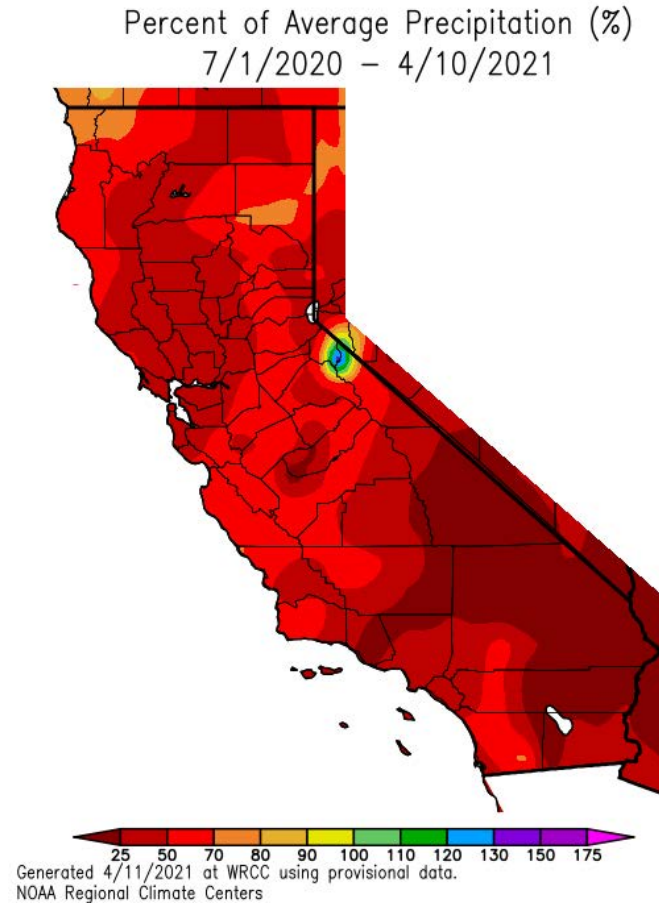
Low rainfall in the Bay Area
- 2020-2021 season (as of April 10, 2021): only ~35% of typical rainfall
- 2019-2020 season: 49% of typical rainfall

Potential fuels for fire will be dry earlier in the year

2021 Fire Season Likely to Start Earlier

By July:

Higher risk of wildfire in mid/upper elevations

Sep – Nov:

Depends on severity of offshore wind events and when the next rainy season starts

Northern California Geographic Coordination Center

Air Monitoring

Air District Monitoring Network
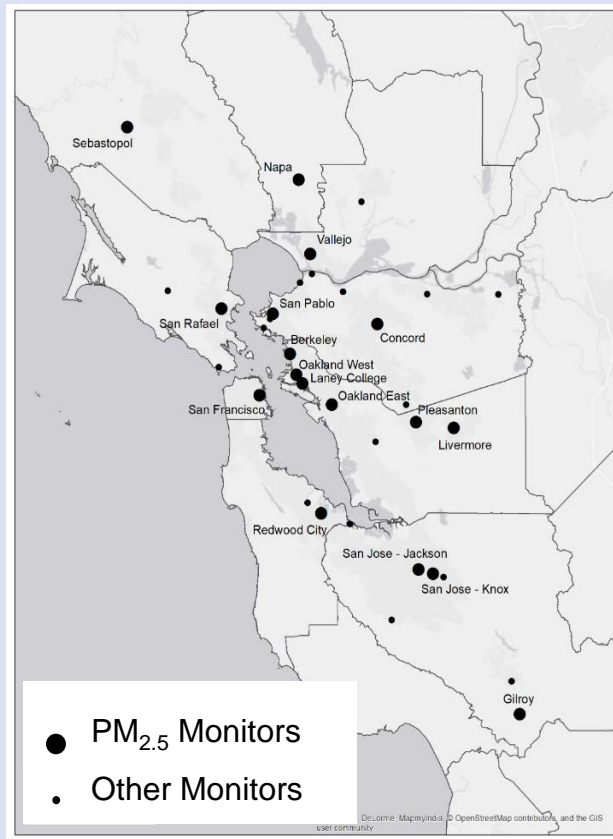
Filter preparation; particles accumulate on filter for 24-hour period
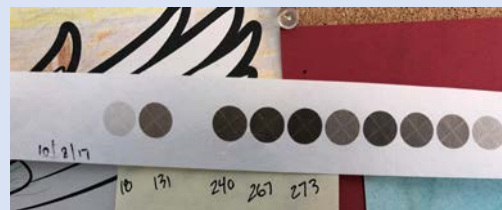
Filter tape after passing through a detector for hourly data

Map legend:
- PM$_{2.5}$ Monitors
- Other Monitors

Low-cost Sensors

Light source → Particles → Detector
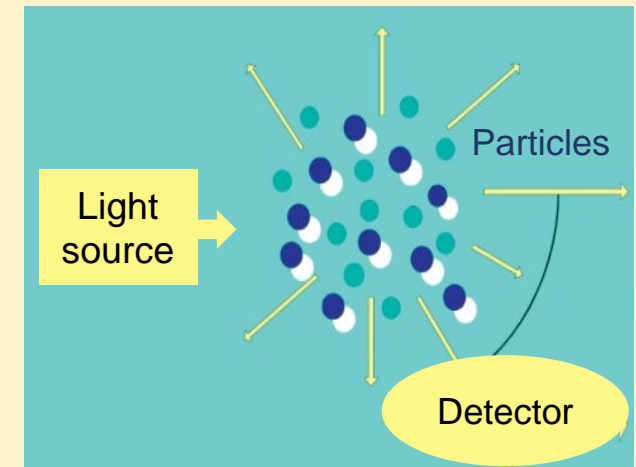
Lasers estimate the number of particles as they move through sensors

Air Quality Can Change Rapidly and Varies from One Location to Another
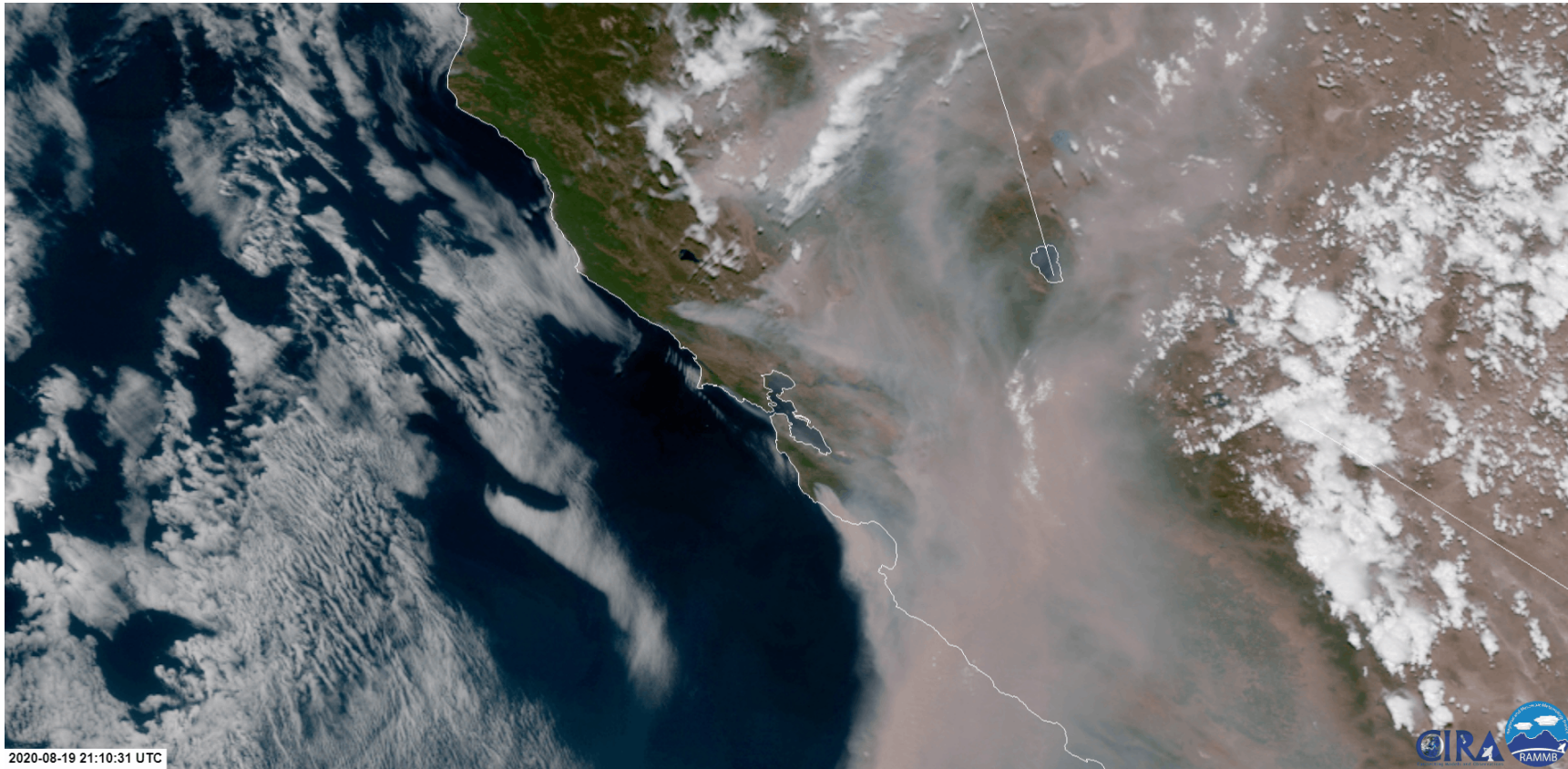
August 19, 2020

Forecasting During Wildfire Incidents

How is a smoke forecast produced?

- Air quality data
- Weather and smoke models
- Satellite imagery and cameras
- Local geography and wind flow
- Marine layer depth

Protocol for Fire Incidents
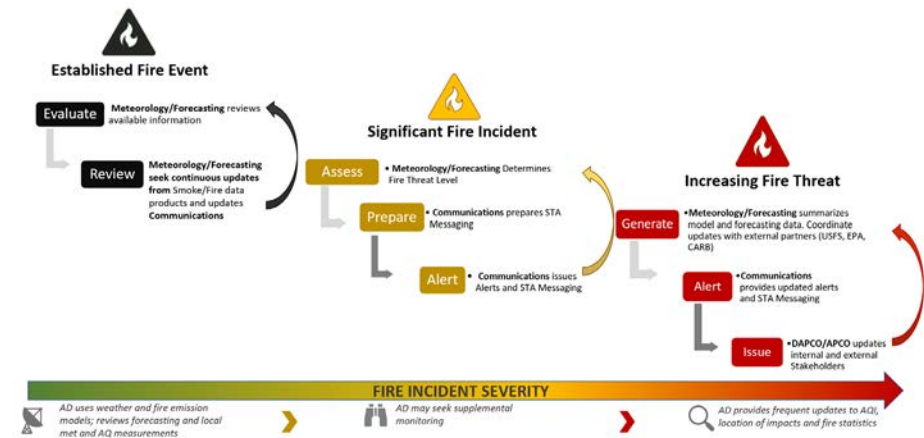
Communications

- Clear & Consistent Wildfire Messaging
  - Bay Area Public Health Officers & Public Information Officers
  - Daily Air Quality Updates & Talking Points
- Wildfire Materials, Videos, Web Page and Daily Air Quality Forecast Videos
- Extensive Public Air Quality Alert Notifications
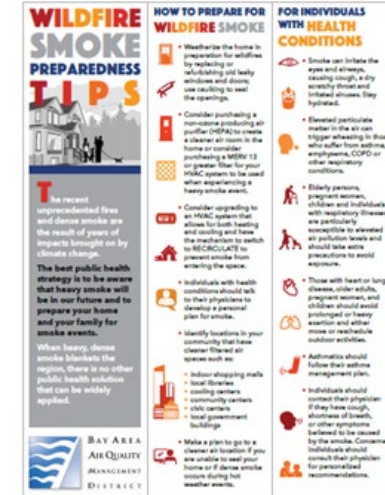
Where Can the Public Get Air Quality Data?

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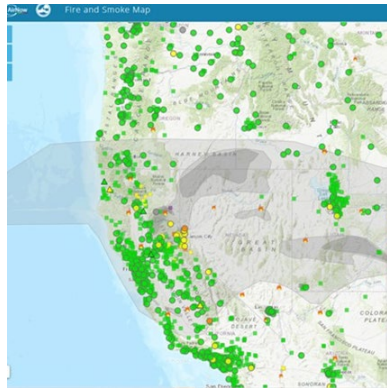
EPA Fire and Smoke Map

Clarity OpenMap
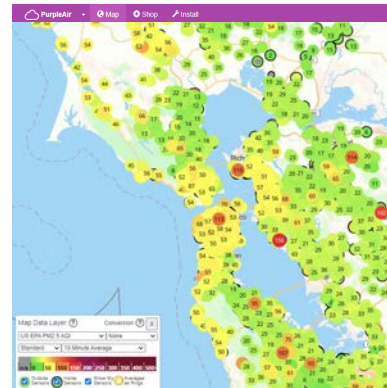
PurpleAir Map
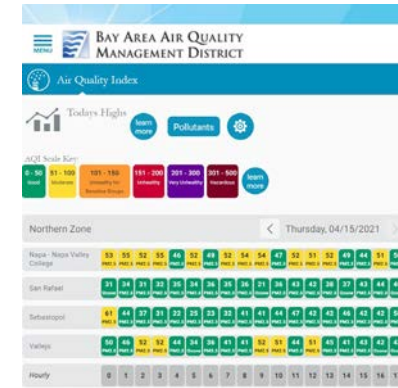
Air District Website

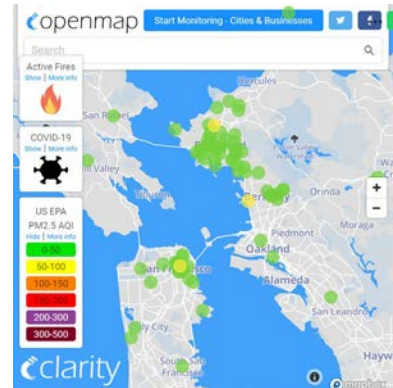**AirNow**

Additional details available: https://www.baaqmd.gov/~/media/files/ab617-community-health/richmond/quarterly-report-documents/guide-to-air-quality-data-websites-pdf.pdf?la=en

Where Can the Public Get Air Quality Data? (cont.)

How bad is the air quality near where I am?
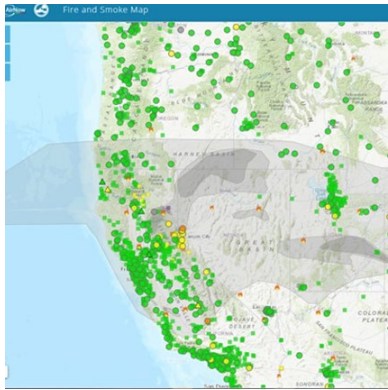
EPA Fire and Smoke Map **Clarity OpenMap** **PurpleAir Map** **Air District Website** **AirNow**
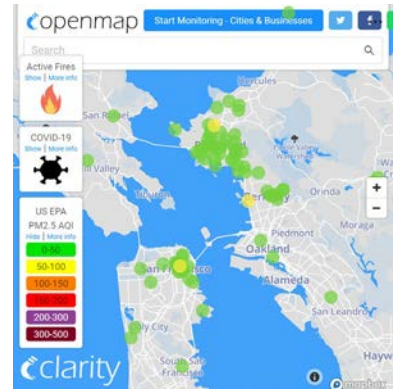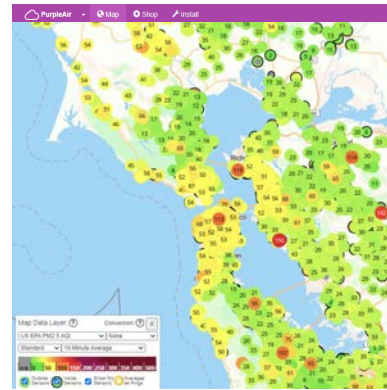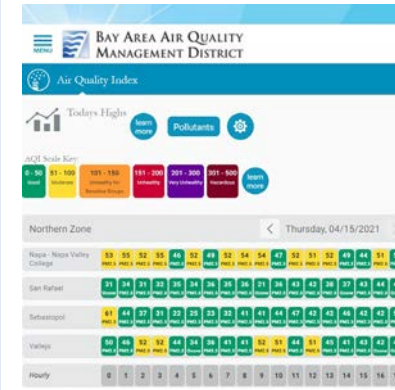
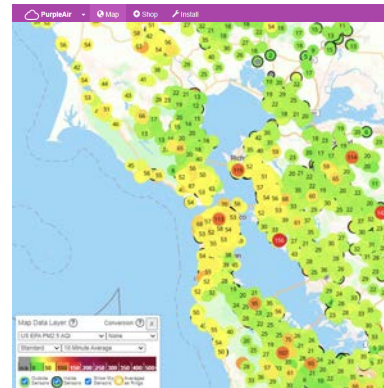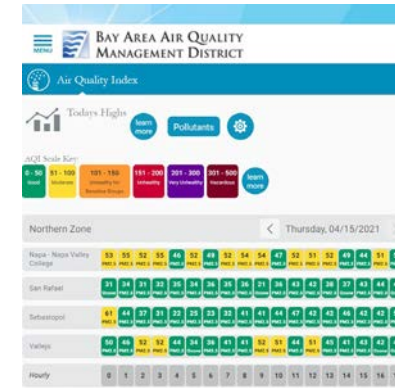# Where Can the Public Get Air Quality Data? (cont.)

Is air quality getting better or worse?
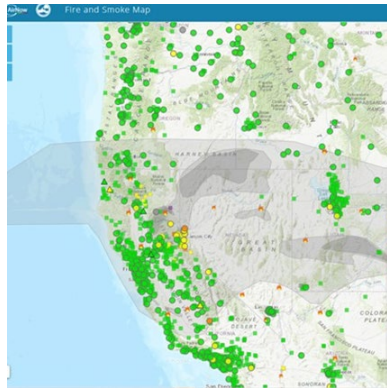
EPA Fire and Smoke Map

Clarity OpenMap

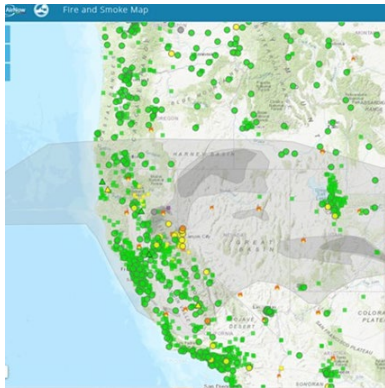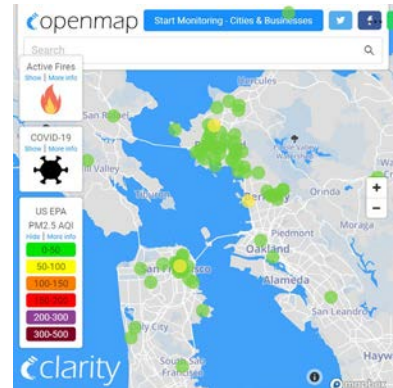**PurpleAir Map**

Air District Website

AirNow

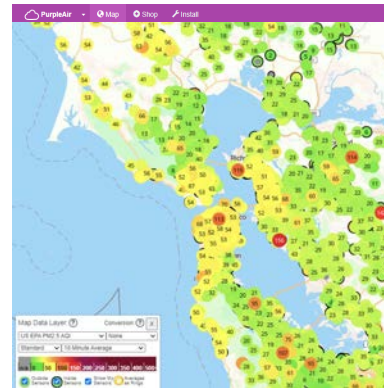# Where Can the Public Get Air Quality Data? (cont.)
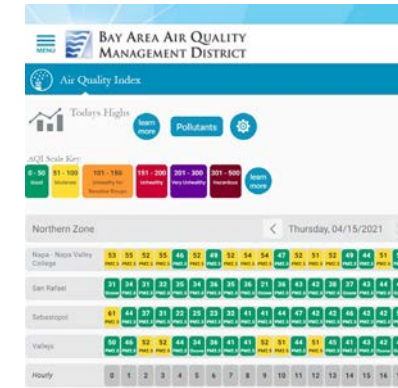
How do air quality levels compare to health-based standards?

EPA Fire and Smoke Map

Clarity OpenMap

PurpleAir Map

Air District Website

AirNow

How to Prepare for Wildfire Smoke

HVAC system set to RECIRCULATE; upgrade to system that allows for both cooling and heating

Non-ozone producing air purifier (HEPA) or MERV 13 or greater filter for HVAC system

Identify locations that have cleaner filtered air spaces and make a plan

Weatherize the home

Individuals with health conditions should talk to their physicians

Additional details: https://www.baaqmd.gov/~/media/files/communications-and-outreach/wildfire-materials/wildfire-preparedness-tips-pdf.pdf?la=en

Reducing Wildfire Risk

Open Burn Program

- Approve Smoke Management Plans

- Amendment (Regulation 5) passed in 2019 exempts public agencies from fees when conducting prescribed burns for wildfire prevention

- Adopting web-based system to coordinate prescribed burns

Wildfire Prevention Chipping Pilot Program

- Properties can apply for free chipping services to dispose of material that would otherwise be burned to help reduce fuel loads and wildfire risks

Protecting Indoor Air Quality

Providing portable air filtration systems at wildfire evacuation centers

Wildfire Smoke Clean Air Center Incentive Program for Vulnerable Populations (AB 836)

Home Air Filtration Program for vulnerable populations suffering from poorly controlled asthma

Questions