

The Bay Conservation & Development Commission and the Engineering Criteria Review Board

Image © 2012 TerraMetrics

Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Data MBARI

Google earth

37°49'43.89" N 122°10'41.42" W elev 809 ft

Eye alt 80.95 mi

Presentation Outline

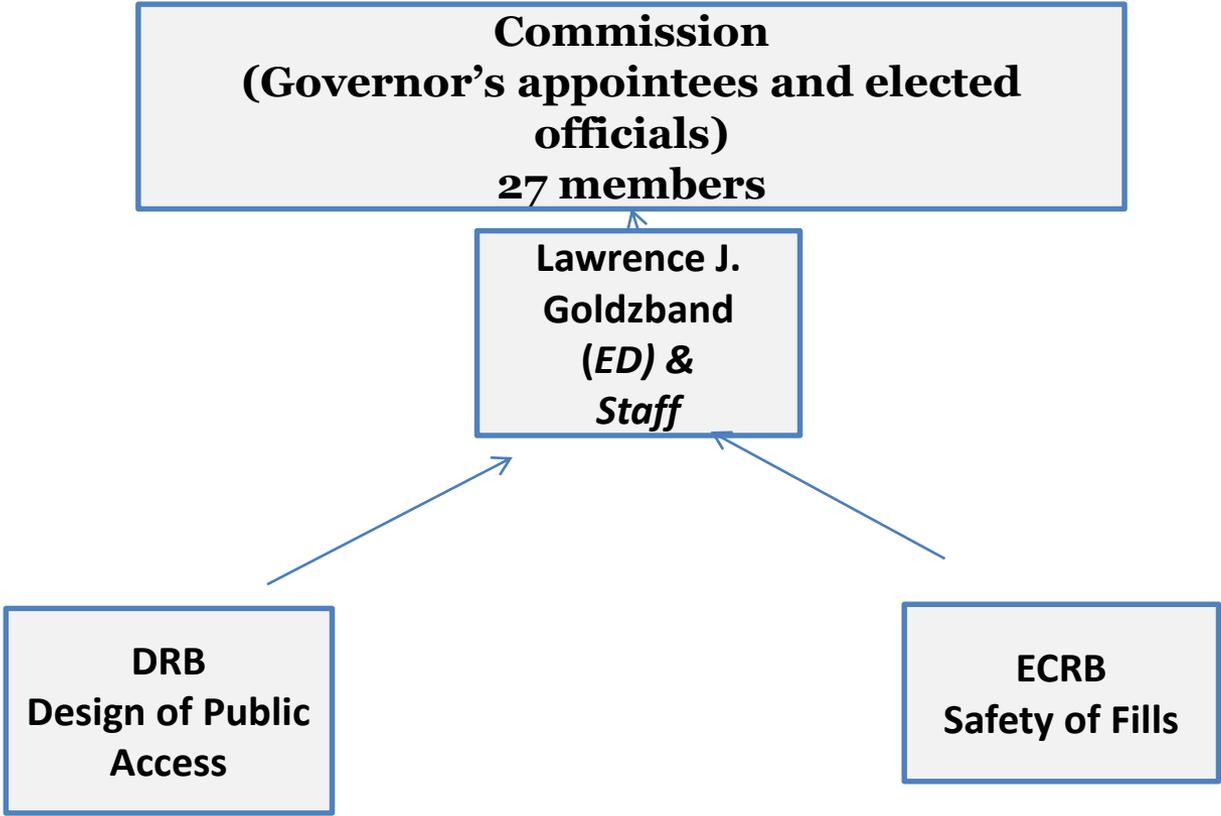
BCDC and the ECRB

Jurisdiction, Law, and Policies

Legal Matters

ECRB Review Process

Questions and Answers



The Commission's 3 Primary Regulatory Responsibilities

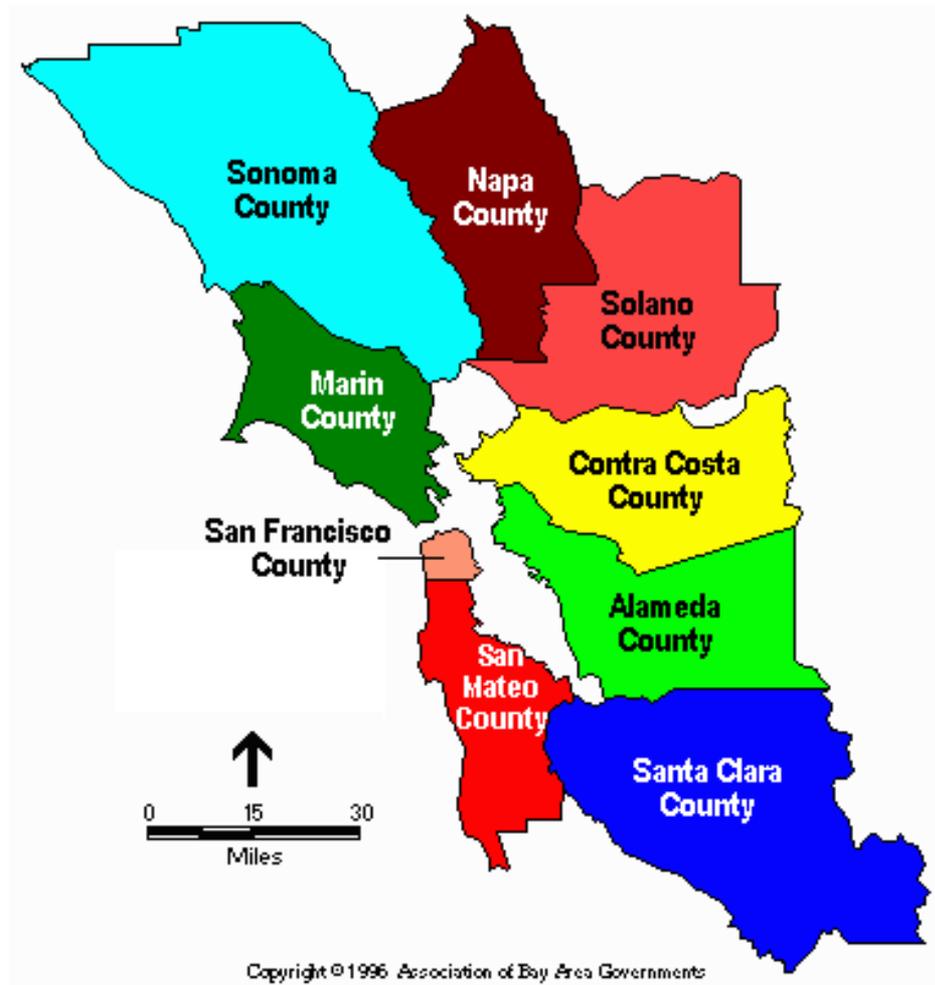
- Regulate fill in the Bay
- Maximize Public Access
- Preserve Priority Use Areas



The Engineering Criteria Review Board

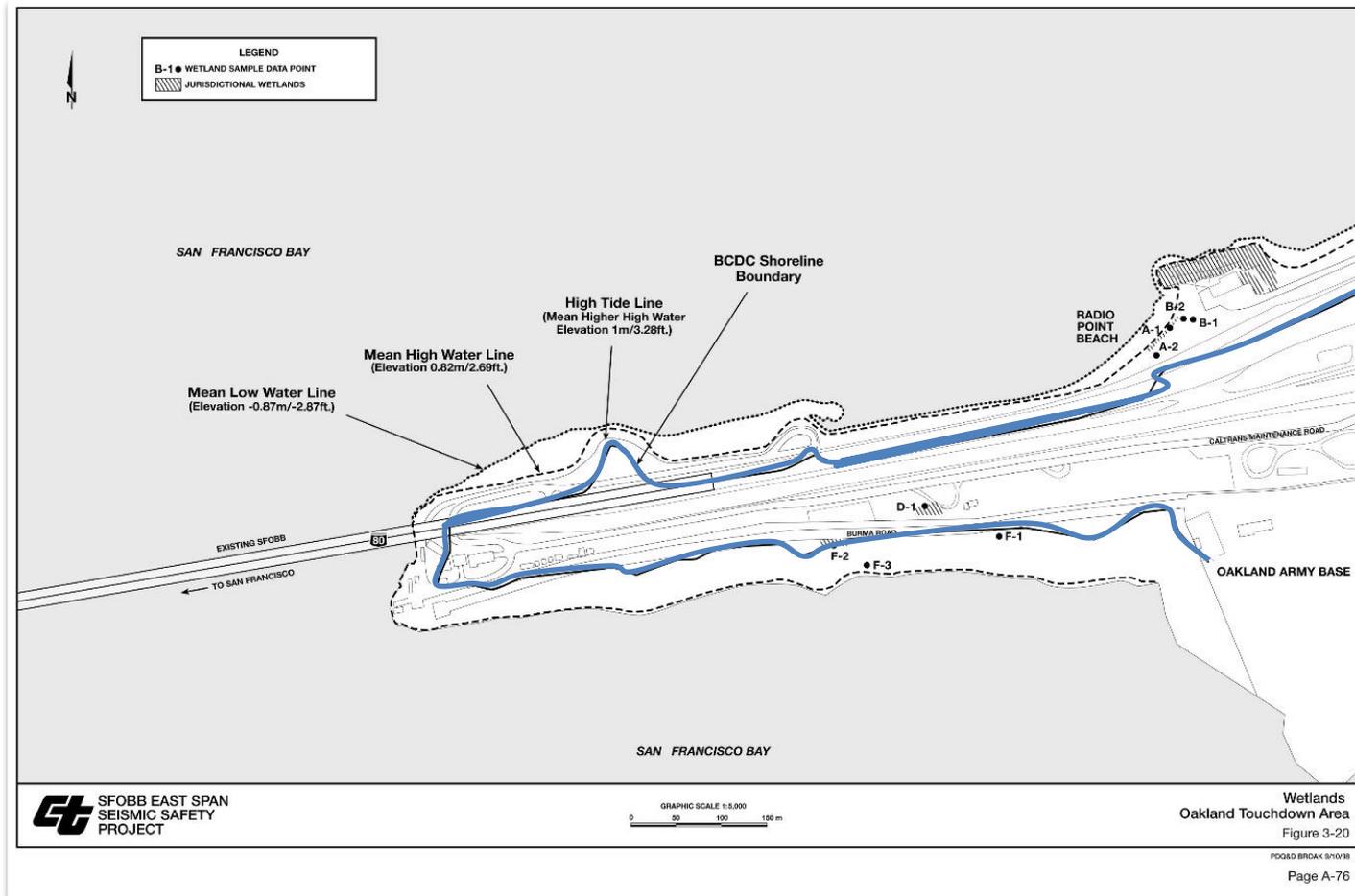
- The Board reviews major or complex engineering Bay fill projects.
- The Board operates under the authority of State law, regulations, and the Bay Plan Policies.
- Reg 10271 Advisory Boards. The Engineering Criteria Review Board shall consist of not more than eleven (11) members....
- The Board shall advise the Commission on problems relating to the safety of fills and of structures on fills.
- The ECRB is composed of leaders in the fields of seismology, geology, civil, geotechnical, structural and coastal engineering, and architecture and advise the Commission on the safety of proposed fill projects.

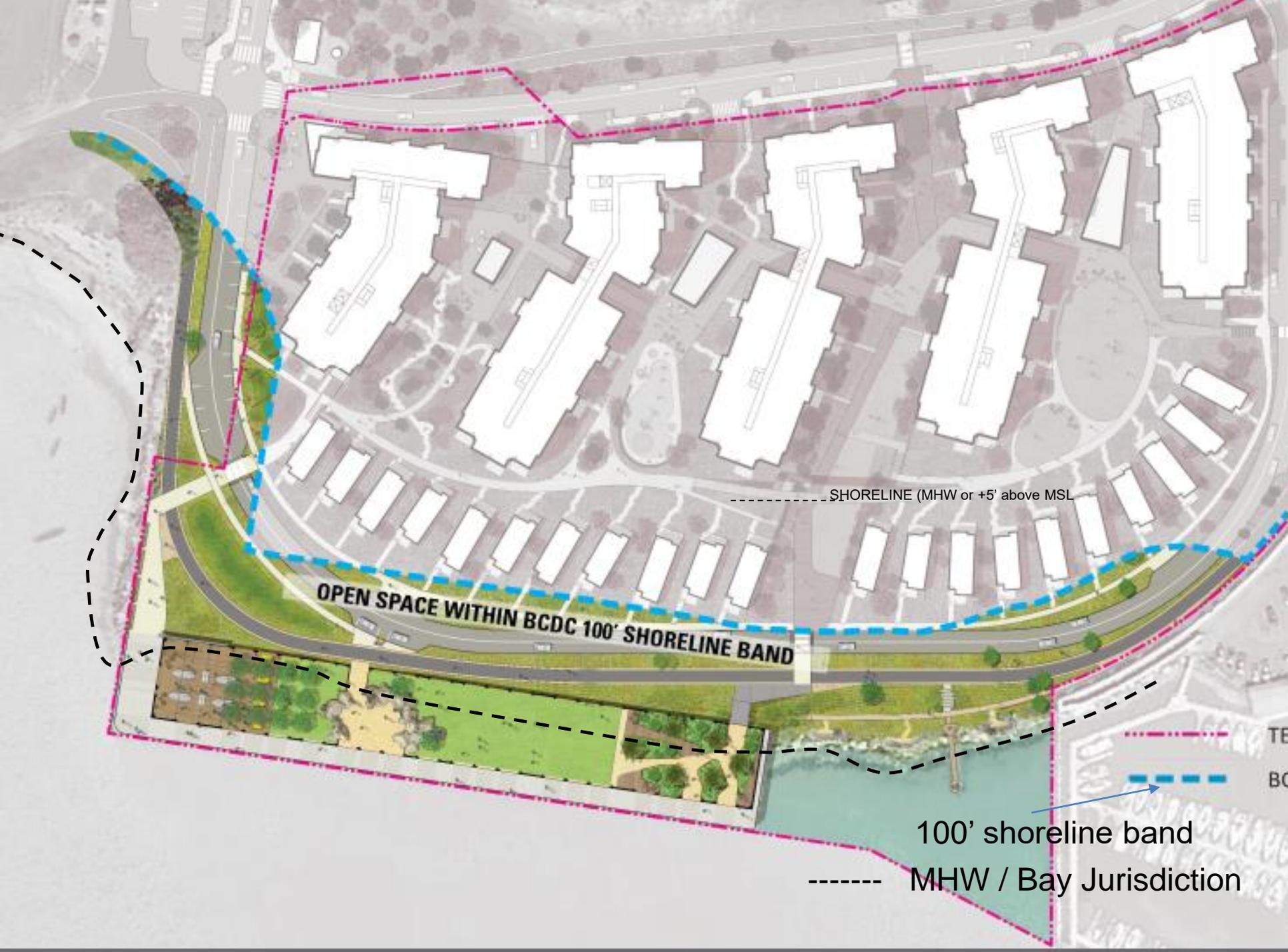
BCDC's jurisdiction includes the Bay and the shorelines of the 9 Bay Area counties



BCDC Jurisdiction: Bay and Shoreline Band

- Bay (defined as the line below of Mean High Water or the line 5' above Mean Sea Level when marsh is present)
- 100-foot shoreline band (between MHWL and 100' inland)





SHORELINE (MHW or +5' above MSL)

OPEN SPACE WITHIN BCDC 100' SHORELINE BAND

100' shoreline band

----- MHW / Bay Jurisdiction

TE
BCDC



The ECRB does not have purview over areas outside of BCDC's Bay jurisdiction.

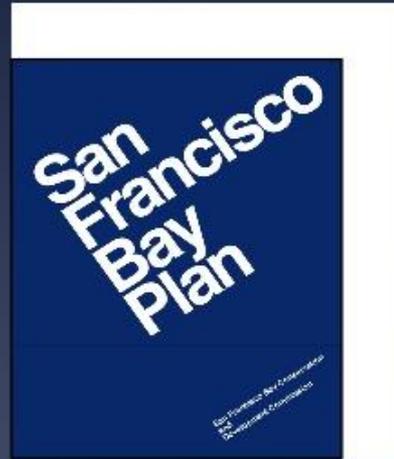
Within the 100-foot shoreline band, BCDC reviews projects for maximum feasible public access, consistent with the project.

LAW

POLICIES

The McAteer-Petris Act of 1965

The Bay Plan



- ▣ Findings
- ▣ Policies
- ▣ Maps
- ▣ Map Policies and Notes

The McAteer-Petris Act and Sound Safety Standards

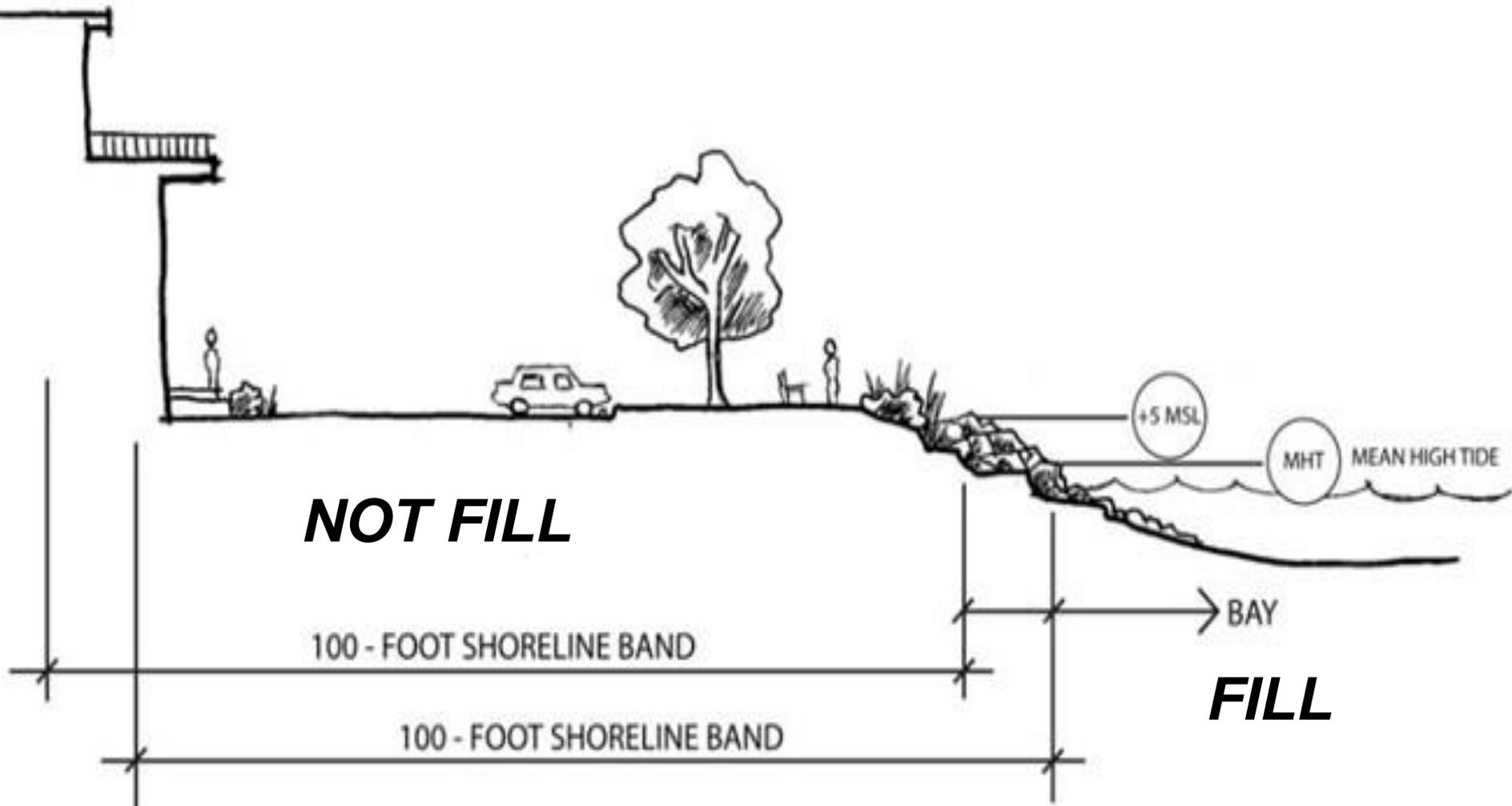
- The McAteer-Petris Act, under which the BCDC operates, requires that all fill placed in the Bay after 1965 be constructed in accordance with sound safety standards in order to afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.





What is fill?

BCDC's Jurisdiction



ECRB has purview over the *safety engineering criteria* of Bay fill (post 1965), including structures over water and any solid fill in the Bay.

The ECRB and The Bay Plan Findings and Policies on Safety of Fills

- The Commission appointed the Engineering Criteria Review Board to review, on the basis of available knowledge, all new fills so that construction of fills would be safe.
- The ECRB reviews the investigations of seismic and flood safety and the resultant designs of proposed fill projects.
- No fill should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the ECRB. (Policy No. 2)
- The level of scrutiny and Board's recommendation on a project would be based on the importance of the structure and the level of the potential hazards of the proposed project.
- The Commission and its staff normally accept the recommendations of its advisory boards, although in all cases the final decision rests with the Commission.

- Flood damage to fills and shoreline areas can result from a combination of sea level rise, storm surge, rainfall, high tides, and winds blowing onshore. The most effective way to prevent such damage is to locate projects and facilities on fill or near the shoreline above a 100-year flood level that takes future sea level rise into account, during the expected life of the project.

CLIMATE CHANGE / SEA LEVEL RISE

Safety of Fills Policy 4

Adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project. New projects on fill or near the shoreline should either:

- (a) be set back from the edge of the shore so that the project will not be subject to dynamic wave energy,
- (b) be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project,
- (c) be specifically designed to tolerate periodic flooding,
- (d) or employ other effective means of addressing the impacts of future sea level rise and storm activity.



LEGAL MATTERS

Bagley-Keene Open Meeting Act (2004)

Disclosures & Conflict of Interest

Public Records Act

Bagley-Keene Open Meeting Act

- If one accepts the philosophy behind the creation of a multimember body and the reservation of a seat at the table for the public, many of the particular rules that exist in the Bagley-Keene Act become much easier to accept and understand.
- Simply put, some efficiency is sacrificed for the benefits of greater public participation in government (“A Handy Guide to the [BKOMA 2004]” by the California Attorney General’s Office.)

Bagley-Keene Open Meeting Act

An advisory body with more than 3 members, such as the ECRB, is subject to the requirements of the Act.

WHAT IS A MEETING?

- A meeting occurs when a quorum of a body convenes, either serially or all together, in one place, to address issues under the body's jurisdiction. (§ 11122.5.)
- A meeting also includes situations in which the body is merely receiving information.

To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.

Serial Meetings/Open Meeting Act

- The Act expressly prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting. (§ 11122.5(b).)
- Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members.
- In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues.
- In conclusion, serial meeting issues will arise most commonly in connection with rotating staff briefings, telephone calls or e-mail communications among a quorum of board members. In these situations, part of the deliberative process by which information is received and processed, mulled over and discussed, is occurring without participation of the public.

Conflict of Interest Code

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict-of-interest codes. The Fair Political Practices Commission (FPPC) has adopted a regulation that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency's code.

Individuals holding designated positions shall file their statements of economic interests, Form 700, with the Commission, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.)

California Public Records Act (2004)
California Attorney General's Office

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA.

ECRB Review Process

- The McAteer-Petris Act states that “public health, safety and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.”
- BCDC staff engineer receives engineering criteria and prepares a staff report highlighting concerns/issues relative to BCDC’s policies on the safety of fills.
- The review is conducted at a public meeting and usually prior to issuance of a BCDC permit.
- The project team makes a presentation summarizing the engineering criteria, followed by discussions between the Board and the project team.
- The ECRB reviews the engineering criteria and provides advice and recommendations so that the project is designed based on “sound safety standards.”
- The Board may recommend modifications that make the engineering criteria acceptable. If the ECRB finds that the engineering criteria are not appropriate, it will so advise the Commission.
- The Commission and its staff normally accept the recommendations of its advisory boards, although in all cases the final decision rests with the Commission.

