



**SHORELINES – October 2007**  
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**New Proposed Rules for Oceanfront Setbacks**

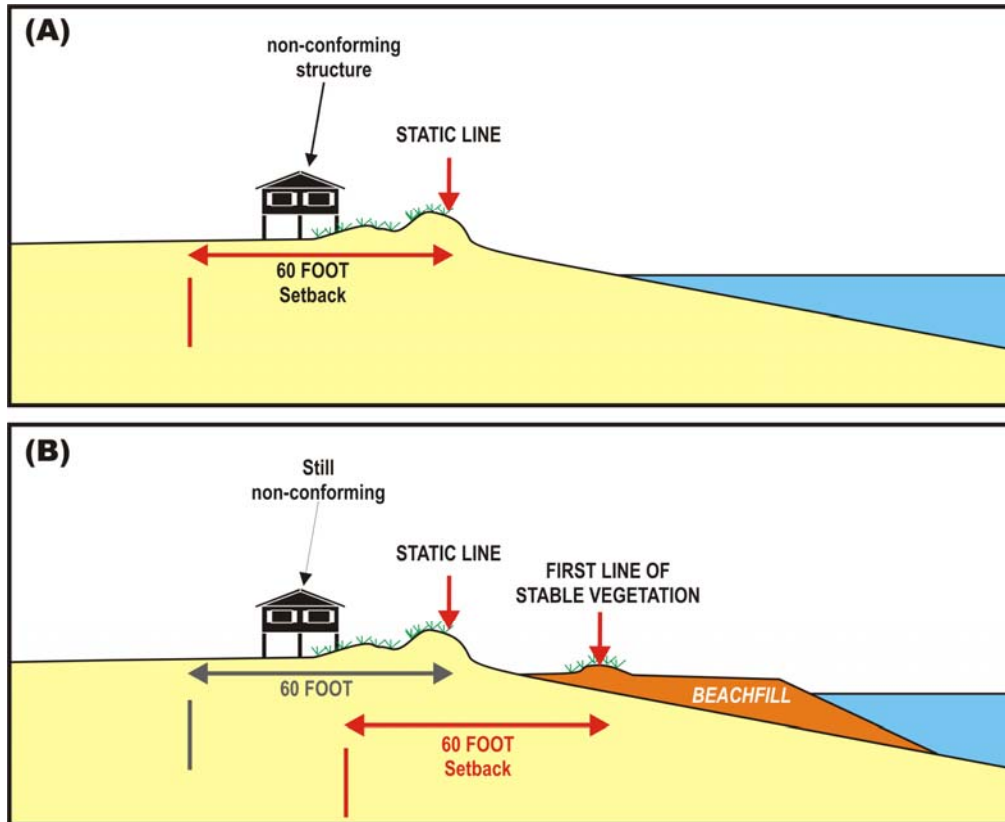
The State's erosion setback line for oceanfront development was established in 1979 and extends landward from the first line of stable vegetation at a distance of 30 times the annual erosion rate at a particular site. In areas where erosion is determined by the N.C. Division of Coastal Management to be 2 foot or less per year, the minimum setback is 60 feet. For structures larger than 5,000 square foot of total floor space, the setback is measured from the first line of stable vegetation at 60 times the annual erosion rate, or in areas where erosion is greater than 3.5 feet per year; the setback line shall be established at a distance of 30 times the annual erosion rate plus 105 feet.

The oceanfront setback line, in addition to local government-based side and front setbacks is the building envelope for oceanfront properties and associated infrastructure, such as septic systems. If a structure cannot "fit" in the building envelope, then the property is considered as unbuildable or if the property currently holds a structure, then the lot is considered as non-conforming (existing structure cannot be replaced or expanded because new development would not meet the erosion rate setback). A non-conforming structure cannot be repaired or reconstructed if it is destroyed by more than 50% by fire or storm.

For communities participating in beach nourishment projects, the vegetation line existing prior to the nourishment project is used for future setback determinations, i.e., the pre-project vegetation line becomes **static**, or fixed, in perpetuity. The static line is only applied for large scale beach nourishment projects, which are defined as those projects where; (1) the total volume of sand includes more than 200,000 cubic yards at an average ratio of more than 50 cubic yards per linear foot (cy/ft) of shoreline, or (2) the effort is a Hurricane Protection project constructed by the U.S. Army Corps of Engineers.

Many property owners and municipalities have disputed that fixing the vegetation line behind nourishment projects in perpetuity (i.e., the static line) could potentially limit smarter-growth options because there would be little incentive for property owners and communities to invest in property if deemed non-conforming before the static line demarcation was established and hence thereafter despite the benefits or a larger beach and seaward migration of the natural vegetation line. In other words, if a home was over 50% destroyed by a natural disaster or fire under a static line condition, then the property owner could not replace the home regardless of where the vegetation line actually existed (see accompanying figure).

The counter argument lies in the potential risk of allowing irresponsible development in terms of both size and location behind a nourishment project with no assurances that the beach will be maintained at a certain, if any, level of protection. Charged with balancing these interests, the N.C. Division of Coastal Management (NCDQM) has developed two new rules addressing the static line and the oceanfront setback methodology as a whole. The two draft rules are available at <http://www.nccoastalmanagement.net/setbacks.htm>, and will be the subject of a public hearing scheduled by the Coastal Resources Commission at their November 29-30, 2007 meeting in Greenville, N.C.



**Panel (A)** – Prior to a nourishment project, the first line of stable vegetation is demarcated and fixed in perpetuity as the static line. The structure depicted in the diagram is non-conforming because it does not meet the setback distance. **Panel (B)** – Subsequent to a nourishment project, vegetation could begin to stabilize seaward of the static line; however the setback remains anchored by the static line. The structure in the diagram remains non-conforming although it could meet the setback from the existing or “new” first line of stable vegetation.

The proposed rules provide a new definition for the static line, a new benchmark for nourishment projects that require a static line designation, and refine the methodology used to determine the first line of stable vegetation - among other items. However the most sweeping changes concern a series of new setback designations (a **graduated setback** model) and a provision granting a **static line exemption**.

The minimum setback factor remains 30 times the erosion rate for structures less than 5,000 square foot. The setback factor increases based upon structure size at seven additional increments, with the maximum setback at 90 times the erosion rate for structures of 100,000 square foot or larger, i.e., the larger the structure – the larger the setback. Also unlike the current rule, there is no relief for properties with higher erosion rates. For example, the setback for a structure just over 5,000 square foot with an erosion rate of 6 foot per year would be 285 foot ( $30 \times 6\text{ft/year} + 105$  foot). Under the proposed rule, the setback for the same structure with the same erosion rate would be 360 foot ( $60 \times \text{times } 6\text{ft/year}$ ).

The proposed rule also allows individual communities to petition the Coastal Resources Commission for a static line exemption if the community prepares a 30-year beach nourishment program and property owners adhere to a new set of oceanfront construction parameters.

The 30-year nourishment plan must identify compatible sand sources for the life of the nourishment program and proof of sufficient financial resources to fund the program

over the design life. Five years must elapse after initial construction of the beach nourishment project before re-development can take place, and any re-development on non-conforming property, either upon an empty lot or replacing an existing structure must be limited to 2,000 square foot. If a structure of whatever size could be built with a static line in place, i.e., fit in the building envelope for the property, then it can be built after a static line exemption is granted.

There are many areas along Bogue Banks that have a static line - the proposed rules are a big shift in the State's approach to coastal management along the oceanfront, and should be interesting to watch when eventually instituted.