



SHORELINES – September 2009

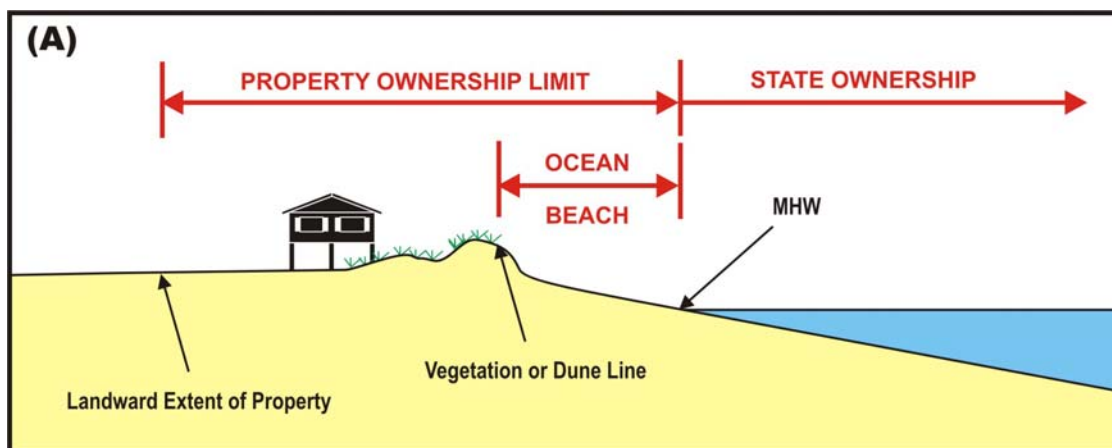
As presented in the *Island Review*

The Public Beach - A Quick Look at Lines in the Sand.

Who owns the oceanfront beach? That's a great question and should be an easy one to answer but as most savvy beach lovers know, this is a complex subject and can vary wildly from State to State. Adding more sand to the beach (a.k.a. beach nourishment) superimposes another layer of complexity and there are tons of regulatory/legal implications involved as well with these "lines in the sand". The purpose of this edition of *Shorelines* is to take a quick look at some of the basic beach jurisdictions here in North Carolina. Please note this very quick "snapshot" examination is limited to **beach ownership** only, which is a separate topic from those laws pertaining to **oceanfront development**, i.e., building setbacks, static vegetation lines, building square footage, conforming vs. non-conforming, and other terms of endearment.

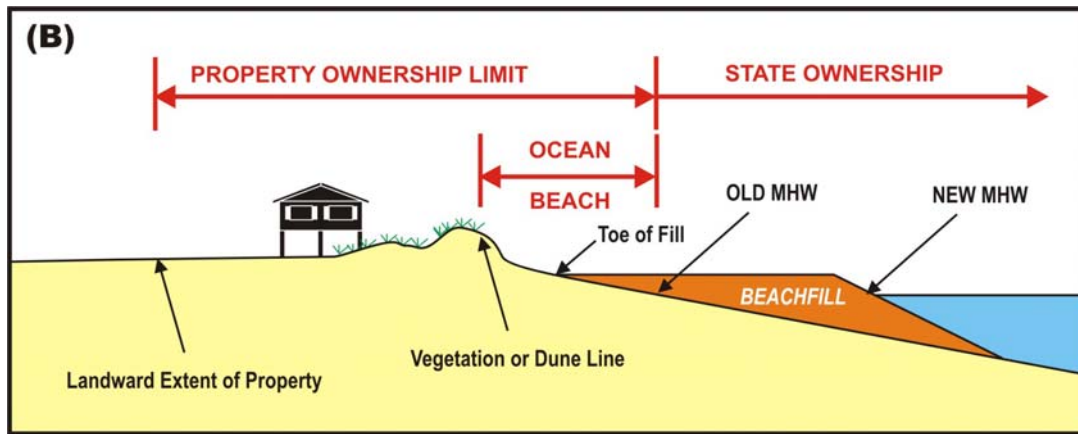
Conceptually, there are three zones going from land to sea. **(1)** The oceanfront property owner has legal claim to his/her property all the way up to the high tide line. **(2)** However, the flat part of the beach that essentially runs from the dune line to the high tide line is referred to as the **ocean beach** – i.e., the public has the right to enjoy this part of the beach without the fear of trespassing. How easy or difficult it is to get the public trust beach (i.e., public access) is a different subject altogether. And finally, **(3)** the State owns everything a "cannon shot" seaward from the high tide line, which is defined nowadays as 3 miles. These three jurisdictions are depicted in the accompanying figure – panel (A).

Also from a law and ordinance enforcement standpoint, it's important to note the State allows municipalities to regulate various activities along the ocean beach area and State-owned waters. Basic land and water uses are often regulated in this manner and issues pertaining to littering, turtle nest protection, alcohol consumption, and beach driving are just some of the examples municipalities may incorporate into various ordinances and enforcement measures.





Panel (B) includes the same three jurisdictions summarized above, but in this case the beach has been nourished with additional sand. The main difference in these two scenarios is that if a beach is nourished, then the State ownership begins at the mean high water line immediately prior to the nourishment project (labeled as OLD MHW in the figure), not at the “new” mean high water line that has been artificially transferred seaward after nourishment (labeled as NEW MHW in the figure). Practically speaking this has very little impact in terms of beach use – the public has the same freedoms and the municipalities have the same degree of jurisdictional powers, i.e., the public use and regulation seaward of the vegetation or dune line remains the same. There’s just more subaerial beach area to manage after nourishment.



In closing however there are some noteworthy oceanfront property issues that bear mentioning in relation to beach erosion or accretion. **(1) Erosion** – as an oceanfront property erodes, the landowner maintains his/her property regardless how small their lot size may become. However once the lot footprint is completely inundated, the next property landward of the submerged land becomes the oceanfront owner. The submerged parcel/lot, which is now all seaward of the mean high water line would be State-owned. **(2) Accretion** – in general, seaward increases to the beach above the mean high water line belong to the oceanfront property owner, which is a straightforward concept. However this tenet also holds true if an oceanfront lot is completely submerged and the new oceanfront owner is the adjacent landward lot (formerly the second row). In this case the completely submerged lot is State owned and the adjacent property landward would be able to claim any new accretion of land if for some reason the process of erosion reversed itself – termed the rule of promotion.

And finally if a publicly-funded beach nourishment project is constructed, then the sand seaward of the old mean high water line is property of the State (as mentioned above). This results in the fact that the oceanfront property owner is no longer afforded the rights to any land gains by natural accretion because the sand would be welding itself to State property (the new mean high water line), not the oceanfront property owned by private individuals/corporations, etc. (the old mean high water line).

So who owns the oceanfront beach? As mentioned in the beginning of this piece – the answer is not as easy as it seems.