



SHORELINES – June 2010

As presented to the *Island Review* magazine

Static Vegetation Line Update

On March 24, 2010, the State's Coastal Resources Commission (CRC) approved static vegetation line exception requests submitted by the communities of Atlantic Beach, Pine Knoll Shores, Indian Beach/Salter Path, and Emerald Isle. The CRC's actions are very important for oceanfront property owners, future development on the island, Town and County tax bases, and how we envision erosion issues and manage beaches. The subjects of vegetation lines, setbacks, and static lines can be confusing, so the following is an attempt to de-mystify (my favorite word) the issues at hand.

SETBACK & VEGETATION LINE SUMMARY

The oceanfront setback line demarcates the most seaward extent where a structure can be built, and is constrained by measuring set distances landward of the first line of naturally occurring stable vegetation. Obviously, the vegetation line waxes and wanes naturally and hence so does the setback at any given time before or after an oceanfront structure is built. The vegetation line in addition to local government based side, front, and rear 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 (i.e., the existing structure cannot be replaced or expanded because new development would not meet the current erosion rate setback). A nonconforming structure cannot be repaired or reconstructed if destroyed by more than 50% by fire or storm.

STATIC VEGETATION LINE SUMMARY

The static vegetation line is only created for communities participating in large scale beach nourishment projects, now defined as a project utilizing over 300,000 cubic yards of sand. The static line is determined as the naturally occurring vegetation line that existed just prior to the nourishment project, and is used for future setback determinations, i.e., the pre-project vegetation line becomes *static*, or fixed. Thus regardless if the vegetation line moves seaward, the setback remains anchored by the static line, and as the rules state – in perpetuity (Fig. 1). This creates hardships for property owners and the valuations of their property because; if a property is non-conforming just before a nourishment project and the establishment the static line, then the property will forever be non-conforming because the static line is established in perpetuity. So regardless if a community continues to nourish the beach and the natural vegetation line is tens or even hundreds of feet seaward of its position before nourishment, the static line is still the benchmark for the setback on that oceanfront property. This usually depresses the value of the property and provides little incentive to engage in home improvements, etc. All of the political subdivisions along Bogue Banks have participated in large-scale nourishment projects and hence have a static line and non-conforming properties.

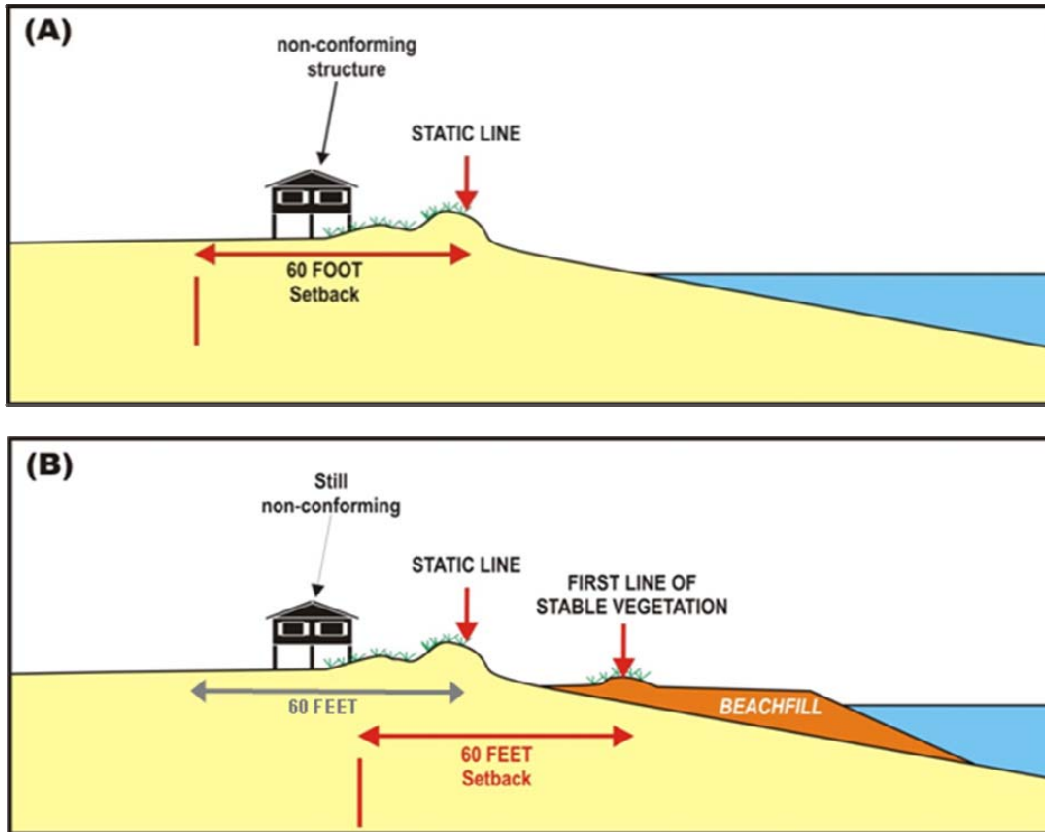


Figure 1 – Panel (A) depicts a beach immediately before a nourishment project and when a static line of vegetation is established. In this hypothetical example, the structure is non-conforming because it is within the building setback. **Panel (B)** depicts the same property subsequent to a nourishment project. A new line of stable vegetation has grown seaward of the static line and ideally could be used for a setback, thus making the same structure conforming. However, the static line is established in perpetuity, and therefore the structure will never be able to take advantage of the present-day vegetation line and will always be non-conforming.

Understanding the hardships discussed immediately above, the CRC passed a new series of rules last year (2009) that allow oceanfront property owners to take advantage of the present-day vegetation line as a measurement point for building setbacks for those areas of the beach that previously received a large-scale beach nourishment project.

Communities can petition the CRC for a static line exception only after 5 years have elapsed since the nourishment project was constructed. The petitioner must also develop a 30-year nourishment plan that in addition to providing a project history, must also; **(1)** identify the appropriate sand resources for the life of the plan, and **(2)** identify realistic monetary resources for the plan. If the static line exception request is granted by the CRC, then oceanfront properties along the community can utilize the vegetation line as it currently exists – not the static line established just before the nourishment project. For homes or land that are “non-conforming”, any new development or redevelopment is limited to 2,500 square feet, and shall not be placed any further seaward than structures on adjacent properties. As the static line rules stipulate, a professional engineer must develop the nourishment plan and the identification of sand resources.

The CRC was very careful in differentiating the building setback policy for a one-time nourishment project compared to a long-term nourishment plan. A one-time project may indeed help the vegetation line advance seaward, but the project will eventually erode back;

hence it was ill-advised to allow homeowners to take temporary advantage of the vegetation line moving seaward. However, if a community is committed to a long-term nourishment plan, then the vegetation line that has advanced seaward will likely remain in this position with the continual infusion of sand. Therefore the relaxation of the static line became a more palatable option for the CRC. As mentioned at the beginning of this piece and as you can probably now appreciate, the implications of the static line exceptions recently approved for Bogue Banks are very significant, transitioning many structures and/or properties from a non-conforming to conforming status.

And finally on a side note, developing the municipalities' nourishment and financial plans that were required for the static line exception request was a very useful endeavor. On a parallel course, the County (Beach Commission/Shore Protection Office) is in the first stages of formulating a comprehensive multi-decadal nourishment plan for the island, complete with permitting authorities to implement the plan. This plan is loosely referred to as the "Master Plan" and will essentially be the logistical vehicle used to ensure the municipalities' nourishment requirements are continually met for their static line exception plans.