

ATTACHMENT E

King George County Zoning & Subdivision Ordinance Update
March 29, 2022
Chesapeake Bay Preservation Area Overlay –
Additional Provisions to Consider



The following are additional CBPA provisions found in the ordinances of Stafford, Spotsylvania, and Prince William Counties. Westmoreland County was also researched as a benchmark, but as the Ordinance reflects King George's, it has not been included in these findings.

As a result of review, Berkley Group will incorporate any desired provisions during comment incorporation and edits following the March 29 Worksession.

Stafford

- **Terms:**
 - In lieu of the typical RPA and RMA:
 - CRPA (critical resource protection area)
 - LRMA (land resource management area)
- **Additional definitions:**
 - Hydric soils means soils that are saturated, flooded, or ponded long enough during the growing season to support wetland vegetation
 - Nonpoint source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.
- **Additional CBPA buffer area requirements:**
 - When the application of the buffer area would result in the loss of buildable area on a lot or parcel recorded between October 1, 1989, and December 2, 2003, the administrator may, through an administrative process, permit encroachments into the buffer area in accordance with the following criteria¹:
 - The lot or parcel was created as a result of a legal process conducted in conformity with the county's subdivision ordinance;
 - Conditions or mitigation measures imposed through a previously accepted exception shall be met;
 - If the use of a BMP was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be re-established or repaired and maintained as required; and
 - The criteria in subsection (5)b. of this section are met.
 - Subsequent to the issuance of a building permit and prior to the issuance of an occupancy permit for the construction of a new single-family dwelling, duplex, or townhouse on any residential lot or parcel, a sign shall be installed by the owner, builder, or developer identifying the landward limits of the CRPA². Such signs shall conform to the CRPA signage policy³ and shall be installed at the expense of the owner, builder, or developer in accordance with the signage policy.
 - Setbacks from the CRPA shall be required for the building containing the principle use from the outermost point of the building to the nearest point of any CRPA buffer line. Where the CRPA buffer is located in the rear yard, the setback shall be 25 feet. Where the CRPA buffer is located in the front or side yard, the setback shall be 12 feet. This provision shall only apply to single-family dwellings, townhouses, and duplexes. In addition, this provision shall only apply to new development projects submitted after June 3, 2008.

¹ King George County's Ordinance includes a provision for lots and parcels *before* the enactment of the Act (Section 8.11.3 C 2) but does not include this provision for lots and parcels in the interim between the enactment of the Act and the creation of this localities' maps.

² RPA for King George County.

³ Signage Policy noted but not codified in full. If King George County wishes to include this, the County would need to develop and adopt a separate a signage policy to enable implementation.

Spotsylvania

- **Additional definitions:**
 - Nonpoint source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.
- **Lot size (specifies area)**
 - Sufficient area for a residential lot shall include a dwelling footprint of at least 1,000 square feet.
- **Additional performance standards**
 - Development Criteria for RPAs:
 - When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria⁴:
 - The lot or parcel was created as a result of a legal process conducted in conformity with Chapter 20, Subdivision Ordinance of the Spotsylvania County Code;
 - Conditions or mitigation measures imposed through a previously approved exception shall be met;
 - If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
 - The criteria in subdivision (4) of this section shall be met.

⁴ King George County's Ordinance includes a provision for lots and parcels *before* the enactment of the Act (Section 8.11.3 C 2) but does not include this provision for lots and parcels in the interim between the enactment of the Act and the creation of this localities' maps. See footnote 1, above; Stafford also includes this provision.

Prince William

- **CBPA Review Board⁵**

The Chesapeake Bay Preservation Area Review Board shall conduct a public hearing to review a request for an exception for encroachment into the RPA, and the associated water quality impact assessment study and may grant the exception with such conditions and safeguards as stated in section 700 of the Design and Construction Standards Manual.

- **Additional Performance Standards** (Part of the Design and Construction Standards Manual)

- RPA Buffers in IDAs⁶

- Includes provisions for exemptions from additional standards for buffers within IDAs.

- RMA Limits Study (742.06)

- Provides provisions for an applicant to be exempt from the requirements of the CBPA, if an RMA Limits Study shows that areas of a subject lot or parcel does not include concentrations of RMA components.

- CBPA – Violations (743.00)⁷

- Provides provisions for the violation of the CBPA overlay (any disturbance not approved)
- Requires a Restoration Plan for violators
- Includes Civil Penalties and Criminal Violations (misdemeanor)

⁵ Prince William County uses a Chesapeake Bay Preservation Area Review Board for exceptions.

⁶ King George County does not have identified IDAs; this language can be revisited in the future, if IDAs are created.

⁷ Protected PDF; see below for references to sections and images for the entire section on violations.

approved an RMA limits study, pursuant to Section 742.06.

743.00 CHESAPEAKE BAY PRESERVATION AREA – VIOLATIONS

743.01 Disturbance of RPA: If areas designated as RPA are encroached upon without prior approval in accordance with Sections 740.04, 740.05 and 740.06, they shall be restored in accordance with a plan approved by the director of Public Works. Restoration of the disturbed areas shall be performed as necessary to meet the intent of the regulations and shall be in accordance with a site specific restoration plan detailing both any existing vegetation and all supplemental plantings to adequately reestablish the natural vegetative condition which existed previously on the site, including trees, shrubs and groundcover. The Virginia “Riparian Buffers Modification & Mitigation Guidance Manual” shall be used as a guide for preparing the restoration plan.

743.02 Violation of Chesapeake Bay Regulations: Any construction, vegetation removal or land disturbing activity in the Resource Protection Area contrary to permitted or allowable provisions of this Section shall be a violation and shall be enforced in accordance with Section 100.

A. Any construction, vegetation removal or land disturbing activity in the Resource Protection Area contrary to permitted or allowable provisions of this section shall be unlawful.

B. Any person, including, but not limited to, the owner, lessee, principal, agent, employee or an authorized agent of the owner, who violates any of the provisions of this

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section shall be subject to the enforcement provisions of this Section 743.04.

C. Upon becoming aware of any violation of any provisions of this Section, the director or his designee shall serve a written notice of violation on the property owner, the person committing or permitting the same, either in person or by registered or certified mail to the property or the owner’s address. Such notice shall specify the provisions of the Section which have been violated, the measures needed to remedy the violation, and a reasonable time in which to remedy the violations. Failure to take steps to comply with such notice within the time provided for therein shall constitute a separate violation of this Chapter.

D. Restoration of Chesapeake Bay Preservation Areas shall be performed to meet the intent of this Section. Submission of an RPA Restoration plan detailing restoration plantings of tree and vegetation will be required. The RPA restoration plan shall detail both any existing vegetation and all supplemental plantings to re-establish natural vegetation of previous conditions.

~~Supplemental plantings to re-establish natural vegetation of previous conditions.~~

743.03 RPA Restoration Plan:

A. The following information shall be included in the RPA Restoration Plan, unless the director of Public Works does not deem the information necessary.

1. Project Location / Vicinity Map.
2. Contours that adequately describe the existing topography and all proposed contour changes.
3. Field verified RPA and wetland limits on property.
4. Area of RPA (sf) which has been disturbed previously. If significant RPA area has been disturbed, it may be divided into segments which better identify the areas.
5. Planting or restoration measures which are proposed for the disturbed RPA and any adjacent areas. Number of overstory, understory and shrub trees shall be detailed for all restored areas. (Planting guidelines shall be taken from CBLAD Riparian Buffer Manual with preference given to native vegetation.)
6. Escrows for such planting and restoration measures.
7. RPA Buffer Restoration Narrative and Notes
8. Planting detail or other applicable detail (i.e. matting, techniques, etc.)
9. Erosion & Sediment controls to be used with RPA Restoration.
10. Escrows for such Erosion and Sediment controls
11. Landscape escrows which will be posted with permit.
12. A date by which the plan will be implemented and completed.
13. The director of Public Works may require different information depending upon the type of violation.

B. An escrow in the form of cash, letter of credit or bond, as provided for in the Administrative and Procedures Manual, shall be posted in an amount sufficient to cover the costs to implement the approved plan. This escrow shall also be used to correct violations for failure to comply with any requirements of this section or with the approved plan.

743.04 Criminal Violations and Penalties:

- A. Violators of this Chapter shall be guilty of a Class 1 misdemeanor.
- B. Each day any violation of this Chapter shall continue shall constitute a separate offense.
- C. In addition to any criminal penalties provided under this Article, any person who violates any provision of this Chapter may be liable to the County in a civil action for damages, or for injunctive relief.

743.05 Civil Penalties:

A. Any person who violates any provision of 740.00 et seq., as it relates to disturbance in RPA, or who violates or fails, neglects, or refuses to obey notice, order, rule, regulation, or variance or permit condition authorized under this Chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county itself or its agent, the court shall direct the penalty to be paid into the state treasury.

B. With the consent of any person who (1) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (2) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subsection A above. Civil charges may be in addition to the cost of any restoration required or ordered by the local government body or official.