

Commonwealth of Virginia

Resource Protection Areas (RPAs) and 420 OSP Credit

January 8, 2020

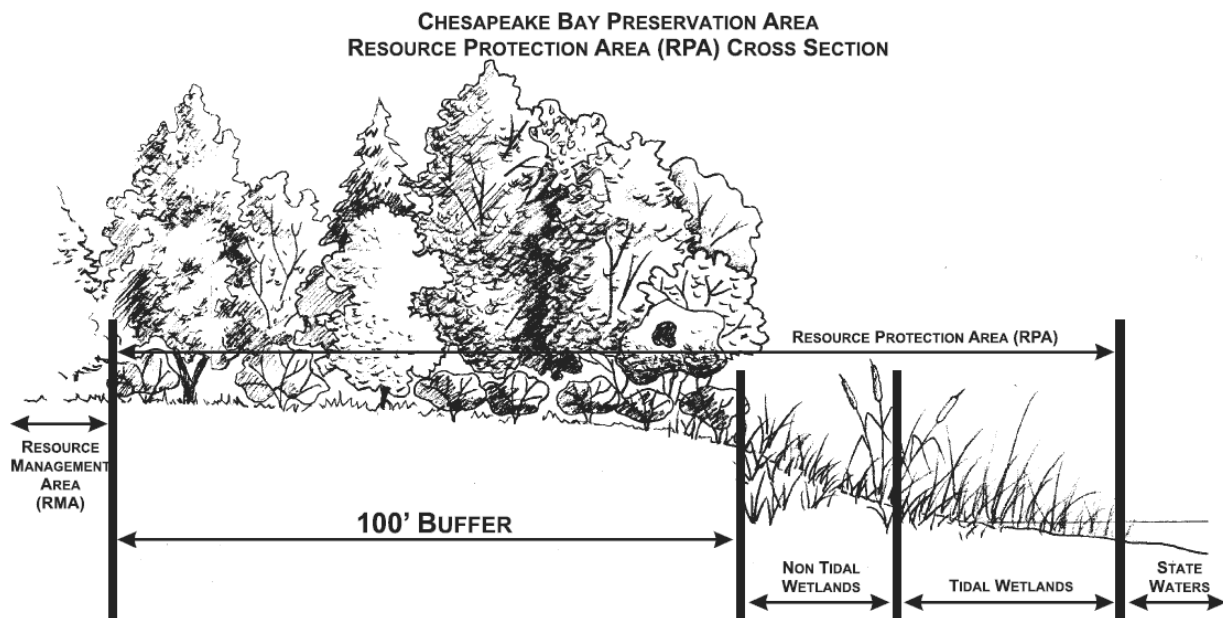
BACKGROUND & EXPLANATION OF RPAs:

Title 62.1, Chapter 3.1, Article 2.5, Section 62.1-44.15:67 through 79 is the Chesapeake Bay Preservation Act (state law, Code of Virginia) which sets forth the requirement for communities in the Chesapeake Bay (or Tidewater Virginia) to (i) incorporate water quality protection measures; (ii) define and protect certain land, called Chesapeake Bay Resource Protection Areas (RPAs); (iii) for the state to provide financial and technical assistance, policy guidance and oversight when requested to local governments; and (iv) all agencies of the state to exercise their authority with water quality protection provisions of all local ordinances. It also says local governments have the initiative for planning and implementing the provisions of this article and that the state shall support and provide oversight by establishing criteria required by the article and provide those resources necessary to enforce the provisions of this article. Local governments are required to adopt ordinances that incorporate the requirements of the Chesapeake Bay Preservation Act. Most communities adopt ordinances that mirror the requirements stated in the state code and corresponding regulation. Local governments enforce the ordinance, with support and evaluation from the state.

Virginia Administrative Code, Title 9, Agency 25, Chapter 830, Section 80 creates and defines the Resource Protection Areas (RPAs) to be:

1. Tidal wetlands
2. Nontidal wetlands
3. Tidal shores
4. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.
5. A 100' buffer located adjacent to and landward of the components listed in 1 through 4 above.

See diagram below which illustrates what a RPA is:



Virginia Administrative Code, Title 9, Agency 25, Chapter 830, Section 140 sets forth the development criteria for the RPAs. Land development may be allowed, subject to local approval, for these purposes:

- i. is water dependent (Acceptable for OSP credit)
- ii. constitutes redevelopment (Would not count for OSP credit)
- iii. is in Intensely Developed Areas (IDAs) (Would not count for OSP credit)
- iv. is a new use pursuant with 4a. of this subsection. 4a is the Permitted Encroachments into the buffer area section (Would not count for OSP credit)
- v. is a road or driveway (Acceptable for OSP credit)
- vi. is a flood control or stormwater management facility (Acceptable for OSP credit)

Exemptions in RPAs:

- i. water wells (Acceptable for OSP credit)
- ii. passive recreation facilities such as boardwalks, trails and pathways (Acceptable for OSP credit)
- iii. historic preservation and archaeological activities (Acceptable for OSP credit)

Permitted Encroachments in RPAs are allowed, with local government application review and approval (as required in the local ordinance), only for lots of record prior to October 1, 1989 if it would result in the loss of a buildable area on the lot. (Would not count for OSP credit)

Virginia Administrative Code, Title 9, Agency 25, Chapter 830, Section 100 allows local governments to create Intensely Developed Areas (IDAs) within the RPAs that are areas that have been highly developed prior to this Act becoming effective and are meant for redevelopment purposes. (Would not count for OSP credit)

KEY POINTS:

- Local governments MUST adopt ordinance and enforce the requirements of the Chesapeake Bay Preservation Act. It's the local governments' enforcement of the Act requirements that should be subject to review for the ISO/CRS Specialist and the basis for whether credit should or should not be granted.
- Local governments may adopt ordinances that go above and beyond the requirements included in the Chesapeake Bay Preservation Act (state law). An example of this higher standard includes expanding the 100-foot buffer to a larger area. Some local governments enforce the Chesapeake Bay Preservation Act strictly, while others take advantage of the ability to create "Intensely Developed Areas" (IDAs) where significant development occurred before the Act was enacted in 1990. An example of an IDA is downtown Norfolk, where development in the floodplain occurred in the 1800s. These communities would likely not submit credit for these parts of their community's RPA, as their local enforcement of the program in these areas is irrelevant. The ISO/CRS Specialist will have to carefully look through local ordinances to see if further restrictions are placed on RPAs, note the percentage of RPA land encroached by pre-1990 structures, and inquire about exemptions granted under the local enforcement of the Act.
- The water features (tidal and non-tidal wetlands) cannot be developed unless a state permit is obtained, which is a difficult process for developers and most typically denied. The locality would not permit development in the water features, so these areas are more predisposed to be open space.
- All areas in the RPAs that are currently developed or subject to exemptions are removed from OSP consideration. The amount of these areas vary from one community to another, so the ISO/CRS Specialist needs to look at the local ordinances and work with the communities to determine exactly which areas are creditable and which areas are not.

TO DETERMINE AREAS CREDITED FOR CRS 420 OSP:

1. The community must show the ISO/CRS Specialist the local CBPA ordinance for consideration for OSP credit. The ISO/CRS Specialist will determine if the local regulations prohibit development and is OSP creditable.
2. Based purely on State Law, the community is to remove all the following areas from their RPAs for CRS credit:
 - A. Intensely Developed Areas (IDAs)
 - B. The entire lot that currently has development (buildings) on it.
3. The community must map their SFHA and RPAs (and all other OSP areas) along with a parcel list of all OSP areas. The map and list must correspond to each other. Each parcel or group of parcels must be labeled on the map in the same manner as they are labeled on the parcel list. The list must include, at minimum, parcel owner, land use designation, acreage of parcel in the SFHA.
4. Consideration can be given by the ISO/CRS Specialist for the way a community previously determined the impact adjustment since much time and effort may have been put into it. Consult with a Technical Coordinator if the community's method varies from this guidance.