



Discussion of the Chesapeake Bay Preservation Ordinance (CBPO)

Presentation to the Planning Commission Environment Committee
With the Exception Review Committee

Matthew Hansen, P.E.

Director, Site Development and Inspections Division

Dept. of Land Development Services

September 28, 2023



Discussion Goals

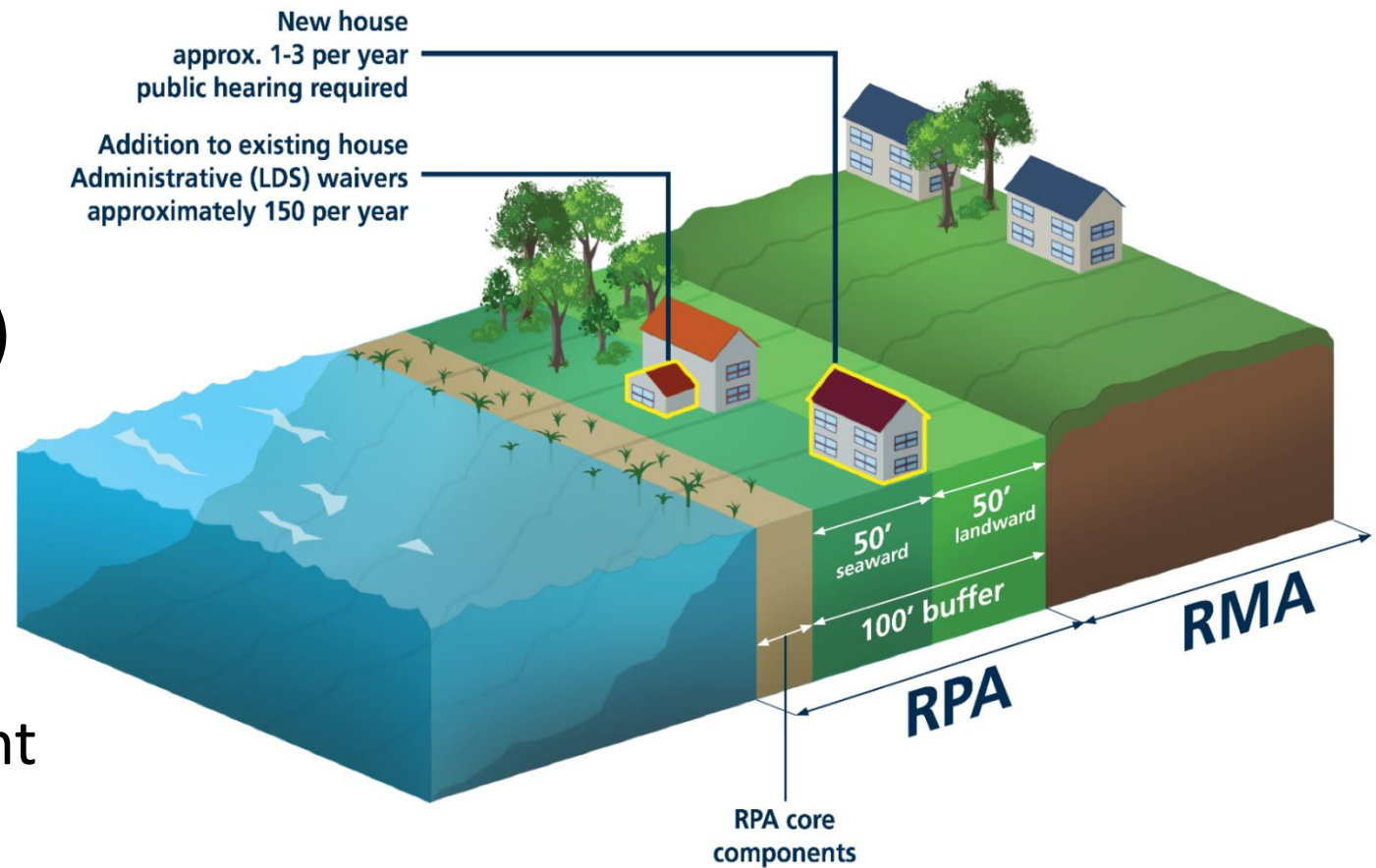
- General Overview and Purpose (ERC - Martin)
- RPA Exception and Administration Overview (Staff - Hansen)
 - Review the types of CBPO Exceptions issued
 - Understand roles of staff, BOS, ERC, and PC in those processes.
- Describe ERC-proposed process for PC/ERC collaboration (Hansen)
- Roundtable Discussion

Types of Development in the RPA

DEQ term and State Regulation	County term and CBPO reference	Example/Most common application
Permitted Uses 9VAC25-830-140(1)	Allowed Uses CBPO §118-2-1	Water Dependent (e.g., storm sewer outfall, docks); Redevelopment
Permitted Buffer Encroachments 9VAC25-830-140(4) & (VAC25-830-150(A))	Administrative <u>Exceptions</u> CBPO §118-5-4 & CBPO §118-5-5	Minor Additions (additions to pre-RPA house, including decks) Loss of Buildable Area (new house on pre-RPA lot, LCG outside 50' seaward)
Permitted Buffer Modifications 9VAC25-830-140(5)	General Woodlot Management CBPO §118-3-3(d)	Vegetation Removal (noxious weeds, or dead, dying, or diseased trees)
Exemptions 9VAC25-830-140(2) and 9VAC830-150(B)	Exempt Uses CBPO §118-5-2 and CBPO §118-5-3	Public utilities, Site Amenities for Passive recreation (e.g., trails)
Encroachments in RPAs requiring formal Exception 9VAC25-830-150(C)	Public Hearing <u>Exceptions</u> CBPO §118-6-7, CBPO §118-6-8, CBPO §118-6-9	Loss of Buildable Area (new house on pre-RPA lot, work inside 50' seaward) Accessory Structures (pre-RPA house) General RPA Encroachment

Exceptions to Encroach into RPA

- Administrative (LDS)
 - New House outside 50' seaward
 - Minor additions
- Public Hearing (ERC or BOS)
 - New house within 50' seaward
 - Detached accessory structures
 - General RPA encroachment



Article 2 Allowed Uses (Administrative)

➤ **Water Dependent Uses (118-2-1(a))**

- Storm sewer outfalls, docks, or other features that must be within the RP

➤ **Redevelopment (118-2-1(b))**

- Must not increase impervious cover in the RPA
- May not be any nearer the RPA components than previous uses
- Allowed uses must
 - Comply with Performance Criteria of CBPO Article 3
 - Disturb no more land than necessary for the proposed use
 - Submit a Water Quality Impact Assessment
 - Establish riparian buffer areas and provide water quality treatment



Article 5 Exceptions (Administrative)

➤ **Loss of Buildable Area** (new house on existing lot)

- [CBPO §118-5-4\(a\)\(1\)-\(8\) or §118-5-4\(b\)\(1\)-\(4\)](#) (depending on age of lot vs. date of RPA)
- Lot must have been recorded before RPA was designated
- Limits of Clearing and Grading (LCG) must be outside seaward 50 feet
- No more than 5000 sq ft impervious surfaces, 10,000 sq ft disturbance
- Minimum necessary, establish veg. buffer where practicable, etc.



➤ **Minor Additions** (attached to house that existed before RPA designated)

- CBPO [§118-5-5\(a\) or § 118-5-5\(b\)](#) (depending on age of house vs. date of RPA)
- House built before RPA designated on lot;
- No more than 1000 sq ft (or 2% of lot area) increase in impervious surfaces (cumulative). Decks are deemed pervious
- Also subject to findings in [CBPO §118-5-5\(c\)](#)

Article 6 Exceptions (Public Hearing)

➤ **Loss of Buildable Area** [CBPO §118-6-7](#) (i.e., new house on existing lot)

- Lot must have been recorded before RPA was designated
- Limits of Clearing and Grading (LCG) is within seaward 50 feet
- No more than 5000 sq ft impervious surfaces, 10,000 sq ft disturbance
- Minimum necessary, establish veg. buffer where practicable, etc.



➤ **Accessory Structures** [CBPO §118-6-8\(a\) or \(b\)](#) (depending on age of house vs. date of RPA)

- House to which detached structure is accessory must have been built before RPA was designated
- No more than 1000 sq ft (or 2% of lot area) increase in impervious surfaces (cumulative)

➤ **General RPA Encroachment Exception** [CBPO §118-6-9](#) (if don't qualify for anything else)

- Additional finding: “water quality benefits exceed associated water quality detriments”

❖ *All Article 6 exceptions also subject to required findings in [CBPO §118-6-6](#)*

Required Findings

- Exceptions may be granted under 118-6 only upon a finding that (118-6-6):
 - a) The requested exception to the criteria is the minimum necessary to afford relief;
 - b) Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;
 - c) The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;
 - d) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
 - e) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
 - f) Other findings, as appropriate and required herein, are met.



RPA Summary

- PC hears related zoning cases that may feature:
 - RPA exceptions under CBPO 118-6 to be heard by the BOS
 - May also show uses in the RPA that will be approved administratively
- ERC hears:
 - Exception requests under CBPO 118-6 without related zoning cases
- Staff administer:
 - Allowed uses under 118-2
 - Exceptions under 118-5
 - Woodlot Management under 118-3

Potential PC/ERC Collaboration

Proposed Process

- Based on September 27 memo from ERC Chair
- Proposal:
 - Cases submitted to DPD which require RPA Exception under 118-6 would be routed to ERC
 - ERC review would focus on required findings of the CBPO and form and advisory memo
 - ERC would discuss in public meetings of the Committee
 - Upon a vote of the ERC, an advisory memo will be sent to staff, PC, BOS

Potential PC/ERC Collaboration

Proposed Process – Questions for Discussion

- What subset of PC cases should be forwarded to the ERC?
 - Only 118-6 exceptions, or more, to include all cases involving RPA encroachments, including those that will require administrative RPA approvals (e.g., accessory structures, such as parking)?
- Should an applicant be given an opportunity to review the draft ERC memo or participate in the ERC's public meeting?