

(3) The Board of Public Works may issue a license for a project involving the construction of a dwelling unit or other [nonwater] NON-WATER dependent structure on a pier located on State wetlands if:

(i) The project is constructed on a pier in existence as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area;

(ii) The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface area of a pier to be removed is not intact but the remaining pilings identify its previous size, that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed;

(iii) The project is approved by local planning and zoning authorities;

(iv) The project is located in an intensely developed area, as designated in programs adopted or approved by the Chesapeake Bay Critical Area Commission under Title 8, Subtitle 18 of this article; and

(v) The project allows public access to tidal waters, if appropriate.

(4) Except for projects under paragraph (2) of this subsection, and in addition to all other provisions of this section, all projects involving the construction of a dwelling unit or other [nonwater] NON-WATER dependent facility on a pier located on State or private wetlands within the Chesapeake Bay Critical Area may not be issued a wetlands permit unless:

(i) The applicant demonstrates that the construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water in accordance with standards established by the local jurisdiction's critical areas program;

(ii) The applicant is required to improve the water quality of existing stormwater runoff from the project site into adjoining waters in accordance with standards established by the local jurisdiction's critical areas program; and

(iii) The applicant demonstrates that any sewer lines or other utility lines extended for the pier will not adversely affect the water quality of adjoining waters in accordance with standards established by the local jurisdiction's critical areas program.

(c) (1) Except as provided in paragraph (2) of this subsection, notwithstanding any other provision of law, the Secretary may not issue a permit under this title for any project involving the construction of a dwelling unit or other [nonwater] NON-WATER dependent structure on a pier located on private wetlands.