

### **3. Criterion 1(A) (Headwaters)**

#### **I. Requirements for Issuance of Permit**

Criterion 1(A) provides that:

(A) Headwaters. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable health and environmental conservation department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:

- i. headwaters of watersheds characterized by steep slopes and shallow soils; or
- ii. drainage areas of 20 square miles or less; or
- iii. above 1,500 feet elevation; or
- iv. watersheds of public water supplies designated by the agency of natural resources; or
- v. areas supplying significant amounts of recharge waters to aquifers.

Criterion 1(A) applies to lands which are not already devoted to intensive development, and which meet at least one of the five subcategories. Criterion 1(A) ensures that development of sensitive headwaters areas complies with all applicable Department of Health and Department of Environmental Conservation regulations regarding ground or surface water quality, such as the Vermont Water Quality Standards (VWQS) or the Vermont Wetland Rules.

#### **II. Burden of Proof**

10 V.S.A. § 6086(a)(1)(A). The applicant bears the burden of proving compliance with Criterion 1(A). *Id.* § 6088(a).

#### **III. Analysis**

##### ***Framework for Criterion 1(A) Analysis:***

1. Are the lands NOT devoted to intensive development? (If they are devoted, Criterion 1(A) does not apply).

2. If so, will the water flow through or upon lands that meet one of the subcategories (i) – (iv)? (If not, Criterion 1(A) does not apply.)

3. If so, is there any potential issue of groundwater quality or surface water quality? (If nothing about the project implicates water quality, then Criterion 1(A) does not apply.)

4. If so, does the project comply with applicable Department of Health and Department of Environmental Conservation regulations regarding ground or surface water quality, such as the Vermont Water Quality Standards (VWQS) or the Vermont Wetland Rules? If so, the project complies with Criterion 1(A). If not, the project does not comply with Criterion 1(A).

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