

## **5. Criterion 1(C) (Water conservation)**

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

Criterion 1(C) provides as follows:

(C) Water conservation. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the design has considered water conservation, incorporates multiple use or recycling where technically and economically practical, utilizes the best available technology for such applications, and provides for continued efficient operation of these systems.

10 V.S.A. § 6086(a)(1)(C).

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

The applicant bears the burden of proving compliance with Criterion 1(C). *Id.* § 6088(a).

### **III. Analysis**

#### *Environmental Board Case Examples*

The Environmental Board has denied an application on Criterion 1(C) because the applicant did not show any plan for water conservation, leaving water conservation to the discretion of lot buyers, where water conservation was significant because it would lower wastewater flows, helping ensure wastewater disposal in an area with difficult soils and topography; and where lowered water demand would help ensure that the groundwater resources would not be depleted. *Re: Peter Guille, Jr., #2W0383-EB, Findings of Fact, Conclusions of Law, and Order at 4 (March 18, 1980)*(denying application on Criterion 1(C), as well as on other criteria).

The Environmental Board has noted that it would apply Criterion 1(C) to require more water-efficient toilets and faucets where an applicant had proposed 3.5-gallon-per-flush toilets and 2.5-gallon-per-minute faucets. *Re: Swain Development Corp., #3W0445-2, Findings of Fact, Conclusions of Law, and Order at 26 (Aug. 10, 1990)*(denying application on other grounds). The Board has also observed that there can be “a link between water conservation under Criterion 1(C) and wastewater disposal under Criterion 1(B) and water supply under Criteria 2 and 3. If the project had been designed to conserve water, then there would be less water consumption and less wastewater to be disposed.” *In re Killington, Ltd., #1R0813-5-EB, Findings of Fact, Conclusions of Law, and Order at 33-34 (Aug. 25, 1998)*(citing *Guille, Findings, Conclusions, and Order at 4 (March 18, 1980)*). This may affect shorelines under Criterion 1(F), as well. *Killington, Findings, Conclusions and Order at 34.*

In another case, the Environmental Board held that a project complied with Criterion 1(C) where the applicants had agreed “to require by covenant the inclusion and the continued use and maintenance of water conserving plumbing fixtures, including but not limited to, lowflush toilets, low-flow showerheads, and aerator-type or flow restricted faucets.” *Re: Lee and Catherine Quaglia, #1R0382-1-EB, Findings of Fact, Conclusions of Law and Order at 5 (Feb. 11, 1982).*

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