

Vermont DEC responses to comments received on the Jay Peak Resort, 2017 Water Quality Remediation Plan Update

The *Jay Peak Resort 2017 Water Quality Remediation Plan Update* was received by the VTDEC Watershed Management Division from the Jay Peak Resort on May 23, 2017. As per the *Procedure for Water Quality Remediation Plans*, the Division posted it to its website and opened a 30-day public comment period. The comment period closed on July 14th, 2017 and comments were received from one party – the Vermont Natural Resources Council (VNRC) via the Vermont Law School. Comments identified below are taken directly from VNRC’s comment submittal and followed by VTDEC responses.

Comment #1 (VNRC)

Proposed Medium-Scale BMPs

The South Mountain Branch failed to meet its interim target for the second year. Therefore, as stated in the Consent Order, Jay Peak is required to implement “medium-scale BMPs” in addition to the “small-scale BMPs” initiated last year. Last year’s “small-scale BMPs” aimed to fit the definition provided in the Consent Order: “ditch repair, mountain work road improvements, spot channel stabilization, [and] supplemental water quality monitoring.” This year, the required improvements must fit the definition of “medium-scale BMPs” provided in the Consent Order: “culvert upgrades, streambank stabilization, stormwater basin retrofits, [and] buffer enhancement.” The “medium-scale BMPs” proposed by Jay Peak in the WQRP update are as follows:

- Route 242 Parking Lot Swale. The proposed addition of a “turf-reinforcing mat” (TRM) aims to stabilize a segment of channel erosion.
- Stateside Road Paving. The proposed additional paved segment continues the progress made with paving initiated last year as a “small-scale BMP.”
- Pole Barn/Sand Pile Settling Pond. The proposed enlargement of the settling pond aims to provide additional sediment retention. This proposed BMP falls within the “medium-scale BMP” definition of stormwater basin retrofitting.
- Stateside Road Swale. The proposed relocation of the guard rail and creation of a rock-lined swale aims to reduce flow over the bank and increase sediment retention. This buffer enhancement falls within the “medium-scale BMP” definition.
- Pole Barn/ Sand Pile Area Driveway and Jet Triple Lift Access Road Intersection. The proposed narrowing of the road and introduction of concrete barriers aims to reduce the amount of impervious area. This proposal falls within the “small-scale BMP” definition of mountain work road improvements.

Of the five proposed BMPs listed in the WQRP update, only two meet the definition of “medium-scale BMPs.” We believe additional “medium-scale BMPs” must be implemented if the South Mountain Branch is going to meet the targets in the Consent Order.

Culvert Upgrade – An Additional Medium-Scale BMP

As Walter suggested during the Annual Meeting on June 27, replacing the culvert under Stateside Road would reduce the sediment levels at the South Mountain Branch site. On the site visit, Walter mentioned that the culvert is undersized and due for an update. Jay Peak's position is replacing this culvert would be "outside the scope of a 'medium-scale BMP.'" We disagree. The Consent Order expressly lists "culvert upgrades" under the definition of "medium-scale BMP."

VNRC requests that Jay Peak initiate a process to replace the culvert this year. VNRC recommends that Jay Peak prepare options for replacing the culvert by January 2018, meet with stakeholders to discuss options, and pursue a preferred option that can be implemented during the 2018 construction season.

VTDEC RESPONSE

According to *Appendix E, Stipulated Consent Order, Docket No. 76-5-14 Vtec, Pre-Attainment Flowchart*, the definitions of small, medium, and large BMPs are given in items #3-#5 respectively. As stated in the above comment, medium-scale BMPs indeed include "Culvert Upgrades, Streambank Stabilization, Stormwater Basin Retrofits, Buffer Enhancement." However, culvert replacement is specifically called out as a large-scale BMP, as defined in item #5 as "Additional Stormwater Basin Construction, Culvert Replacements, Channel Restoration." Examples of "culvert upgrades" might entail improvements to existing culverts such as energy dissipation improvements to prevent or halt erosion or additions of headwalls to prevent erosion, but these fall short of the large-scale BMP definition of "culvert replacement." Therefore, it doesn't appear as if this culvert replacement on South Mountain Branch Tributary #3 is required this year. However, as the commenter suggests, and to which VTDEC agrees, Jay Peak should initiate culvert replacement planning and options development in preparation for potential replacement soon if large-scale BMPs are ultimately required.

VTDEC agrees with the commenter's characterization of the proposed BMPs set forth in the WQRP Update as being either small or medium scale BMPs. Based on plan review and staff site visits, VTDEC believes this entire suite of proposed BMPs will benefit water quality in the South Mountain Branch tributary, regardless if considered small or medium scale BMPs. At this time, VTDEC believes the proposed BMPs are sufficient, if properly installed and maintained, to meet the compliance targets set forth in the Consent Order.

Comment #2 (VNRC)

Offsets for Proposed Construction of Athletic Fields in Jay Branch Watershed

As noted by Jay Peak at the annual meeting, the soccer fields are subject to the offset requirements in the Consent Order. Per provision 5.3 of the Consent Order (page 8), Jay Peak must offset the sediment loading from the construction-phase and operational-phase discharges from the approximately ten acres of soccer fields and accompanying parking lots in the Jay Branch watershed. These calculations should be prepared according to the Offset Methodology Memorandum outlined in the Consent Order in Appendix D. Per provision 5.0 of the Settlement Agreement dated February 12, 2015, Jay Peak must meet and confer with VNRC to determine whether the proposed construction-phase and operational-phase discharges can be offset by the offset projects proposed by Jay Peak. The Settlement Agreement

states that this discussion should take place at the annual meeting. Since this conversation has yet to occur, we must schedule an additional meeting this year to discuss the offset projects proposed for the proposed new construction. Per provision 5.4 of the Consent Order, any proposed offsets for new construction shall be incorporated in the WQRP update and made available for public notice and comment. Since these offsets were not included in the WQRP update dated May 23, 2017, any proposed offset projects for the athletic fields must be incorporated in an additional WQRP update that is open for public comment.

VTDEC RESPONSE

VTDEC agrees that for Jay Peak Resort to move forward with the soccer fields project, all provisions of the Settlement and Consent Order regarding offsets must be fulfilled. However, as of this writing, no VTDEC Stormwater Program permits have yet been applied for. If Jay Peak Resort plans to move forward with this project prior to the next annual meeting, discussions with Jay Peak Resort, VNRC, and VTDEC will need to be arranged, and offset accounting must be identified in the WQRP and properly noticed for public comment prior to construction.