



The **WALT DISNEY** Company

Robert A. Antonoplis
Assistant General Counsel

February 12, 2015

Mr. Kurt V. Berchtold
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main St., Suite 500
Riverside, CA 92501-3339

Subject: Comments on Second Draft Orange County Municipal Separate Storm Sewer System (“MS4”) Permit, Draft Order No. R8-2014-0002, NPDES Permit No. CAS618030

Dear Mr. Berchtold:

The Disneyland Resort (Resort) greatly appreciates the opportunity to provide further comments on the Second Draft Orange County Municipal Separate Storm Sewer System (“MS4”) Permit, NPDES Permit No. CAS618030 prepared by the California Regional Water Quality Control Board Santa Ana Region (“RWQCB”) for implementation by the Orange County Flood Control District, the County of Orange and the Incorporated Cities therein within the Santa Ana Region for Urban Runoff.

Our comments focus on the RWQCB’s requirement for a compliance waiver when a project proponent elects to use credit programs in lieu of employing structural treatment control BMPs at the project site. Our Sub-Watershed BMP Plan for the Disneyland Resort dated December 12, 2013 shared with the RWQCB and approved on April 16, 2014, outlines how a credit program would be implemented at the Resort. Pursuant to this plan, the Resort would implement LID infiltration BMPs in areas of the Resort although not required by the MS4 Permit, and the volume of stormwater controlled by those infiltration BMPs could be banked as a “BMP credit” for future development projects. This entire banking process would be subject to the full inspection, monitoring and approval by the City of Anaheim, which is the lead agency for post-construction BMP strategies and facilities where the Resort is located.

In speaking to RWQCB Staff on February 3, 2015, staff believes the Resort’s credit program would be subject to the “retrofit program” requirements and would have to meet the conditions of fourth priority consideration. The Resort’s credit program does include credits generated from retrofits, but instead is an equivalent program to the first priority considerations that rely on retention or infiltration BMPs. We consider the Resort’s robust credit program to be equivalent to or better than subsequent priority considerations (second through fourth) and should thus have its own section in the MS4 permit.



We believe a credit program such as this result in a greater degree of environmental protection compared to project-by-project BMP implementation since:

- (1) Credits are always generated with retention LID BMPs, which is the first priority consideration in the draft MS4 Permit (MS4 Permit Section XII.F);
- (2) Credits are generated by treating stormwater runoff although not required to be treated by the MS4 permit;
- (3) The volume of water is treated prior to construction, and for a longer period of time, compared to volume treated on a project-by-project basis; and
- (4) Post-construction stormwater that otherwise would have been discharged to the storm drain system is instead being infiltrated onsite and retained in the local water supply.

Because of this, we take strong exception to the provision that use of credit programs needs a “waiver” under MS4 Permit XII.L from the requirement to implement structural treatment controls contained in an approved WQMP. “Waiver” under Section XII.L is a finding that compliance with the MS4 Permit is not technically and economically feasible, necessitating relief from the compliance obligations. The granting of the waiver by the Board allows a project proponent to proceed with a lesser degree of environmental protection than would have otherwise been required by the MS4 Permit.

This is not the case when the Resort implements and uses credit programs. As discussed above, in generating a bankable credit for a future project, the Resort has treated and infiltrated a larger volume of runoff for a longer period of time compared to implementing BMPs at the future project site. By investing resources upfront, the Resort is providing a greater level of environmental protection sooner and is enhancing the local water supply. By requiring a waiver, we believe the Board is treating the use of credit programs as equivalent to a lesser degree of environmental protection. This is simply not the case.

There are also practical considerations for not requiring a waiver for use of the credit programs. Granting a “waiver” implies that the project proponent would have otherwise been in noncompliance with the MS4 permit. Since the Resort may be using credit programs on a periodic basis, the granting of multiple “waivers” by the Board could be misconstrued by some as a pattern and practice of systematic voluntary non-compliance by the Resort. This is hardly the case, given the environmental benefits of the voluntary LID retention projects and the full oversight by the City of Anaheim. In our view, the concepts of waiver and credit programs must be decoupled.

We believe that the goal of the “waiver” provision, as applied to the credit program, was for the Board to receive contemporaneous notification from the co-permittee (in our case, the City of Anaheim) that a project proponent is using a banked credit in its WQMP. If so, we have no objection to such a notification requirement or a requirement that the Board approve or reject use of the banked credit within a 30-day period. We therefore request that the credit programs language be placed in its own section in the MS4 Permit apart from the waiver section, and that the co-permittee be required to notify the Board whenever a project proponent elects to use a banked credit. We also recommend language be added in the MS4 Permit requiring the Board to approve or reject use of the banked credit



within 30 days, with no response from the Board after 30 days deemed an approval and thus offer the following language for Section XII.J Credit Programs:

J. Credit Programs

1. Co-permittees are authorized to allow transactions of all or any portion of the untreated design capture volume or flow “credits” between projects within the same watershed of the nearest receiving water of the U.S. The “credit” shall be generated when a LID BMP has been designed to treat the design capture volume or flow from an area that is outside of the project boundaries. Credits must be generated and traded subject to the following additional limitations:

- a. Additional credits may not be generated by oversizing the LID BMP relative to its tributary area.
- b. The Co-permittee managing the credit exchange or trading must provide written notice to the Executive Officer of the intent to approve the transaction at least 30 days prior to approval by the Co-permittee. If 30 days have elapsed without action by the Executive Officer, the proposed transaction is deemed approved. The receiving project must be eligible for a waiver as described above.
- c. The credit may only be used once for the receiving project; it may not be re-used for future projects in the same site as the original project receiving the credit.
- d. The selection of structural treatment controls for future projects on the retrofit site must be based on the merits of the project alone and not on credits allowed for past projects in the same space.
- e. The Co-permittees where the affected projects are located must have and employ an effective system of accounting and tracking for the credit transfers.

If you have any questions or require additional information, please do not hesitate to contact Janina Galicinao at 714-781-3563 or me at 818-560-8943.

Sincerely,

Robert A. Antonoplis
Assistant General Counsel, Environmental Compliance
The Walt Disney Company

cc: Adam Fischer – RWQCB
Janina Galicinao – Disneyland Resort
Jerry King – JA King and Associates