

Storm Water, Grading & Local Agency Approvals Tustin USD

David Miranda – Tustin USD

John Squillace – Barnhart Balfour Beatty

Project Process

- ☐ A Project is conceived
- ☐ The Project is assigned to the architects and engineers to design, and develop all of the needed documents to comply with various Federal, State, and Local regulations
- ☐ Project plans are submitted to the State Architect for review and approval
(About a 6 month process)

Project Process

- ☐ The plans designed by the A/E are supposed to address all current regulations, including Federal, State, and Local Storm Water requirements (NPDES)
- ☐ Tustin USD is in a dispute regarding exemption from local grading ordinance, city jurisdiction, and interpretation of Government Code pertaining to school construction projects
- ☐ Even if the school district is exempt from city permitting requirements, this does not mean that the projects are exempt from the state NPDES regulation

WQMP

- ☐ Currently the District is under no obligation to prepare a Water Quality Management Plan (WQMP)
- ☐ If a discretionary permit is required from the City or County; then a WQMP is required
- ☐ The District is outside the Existing Municipal Separate Storm Water Sewer System (MS4) jurisdiction
- ☐ All areas outside the MS4 permit will have to conduct a water balance evaluation on all projects starting September 2, 2012
- ☐ State and Regional Water Resources Control Boards are the reviewing agencies

Project Process

- ☐ The A/E firms should be designing in post construction Stormwater Control System (BMPs) to comply with local regulations
- ☐ As part of the initial permitting process the district or its representative prepares the NOI (Notice of Intent) and a Storm Water Pollution Prevention Plan (SWPPP)
- ☐ The SWPPP is the plan for controlling pollutants on construction sites and allows stormwater discharge provided the regulations are followed

Project Process

- ☐ The SWPPP is a dynamic document; reflecting the project site as it changes
- ☐ It requires weekly site inspections, and inspections before, during, and after rain events to evaluate Best Management Practices (BMPs) to reduce the pollutants in the storm water discharging from the site
- ☐ It also defines the types of monitoring required during a rain event

Project Process

- ☐ The SWPPP address Non-Storm water pollution and Hazardous Substances. How they are used on site and how these pollutions can be prevented
- ☐ It contains Waste Management requirements to reduce construction waste in storm water
- ☐ It requires the personnel performing the inspections and BMP implementation to be trained in a state program

Project Process

- ☐ The SWRCB requires a detailed annual reporting of inspections and other project activities through SMARTS (the states electronic reporting system)
- ☐ The District and the designated Legally Responsible Person (LRP) are subject to fines from the State in the order of up to \$10,000 per incident /day, and \$10 /gallon of water polluted. (one gallon of oil can pollute 1,000,000 gallons of water)
- ☐ Federal Fines can be \$37,500/incident /day

Project Process

- ☐ Stormwater Regulations can be enforced by the State or Regional Water Quality Control Board, EPA, or other Federal and State Agencies
- ☐ We can not terminate the stormwater controls until we meet all of the States Notice of Termination Requirements; including landscaping, maintenance and post construction water quality requirements
- ☐ All documents must be kept for 3 years

Municipal Separate Storm Sewer System (MS4)

- ☐ Phase I – LARGE CITIES
- ☐ Phase II – (Medium and Small Cities)
- ☐ Non- Traditional MS4
 - Schools
- ☐ Regions 4,8,9 did not designate and relies on the State to designate
- ☐ Established the Municipal Permits in each Region

MS4

Non- traditional

- ☐ New Phase II draft permit Issued on June 7, 2011
- ☐ THE RULES CHANGE
- ☐ State Budget Problems and Staffing
- ☐ How will the New Phase II will treat Schools?
 - Not Designated and pushed back on Regional Board

County of Orange

NEW MWQMP

- ☐ Approved May 20, 2011
- ☐ Establishes procedures and requirement that the county and its co-permittees must follow
- ☐ Even though TUSD is not a co-permittee, the District could establish an ordinance or rule that requires the District to comply with the MWQMP
- ☐ By doing this they have achieved many of the same things that the MS4 requires

County of Orange

NEW MWQMP

- ❑ The model WQMP describes the requirements for preparing a project WQMP. Public Agencies have their own template
- ❑ TUSD exploring:
 - Consistency Determination with County of Orange
 - Conditional Waiver from Regional Water Board - County of Orange finding TUSD to be in compliance with North Orange County MS4 Permit

Tustin USD v City of Tustin Overview & FAQ's

The Issue

- ❑ City of Tustin's Unlawful, Unreasonable & at Times Unrelated Demands Were Causing Costly Delays to School Construction Projects
- ❑ Tustin USD filed a Complaint for Declaratory and Injunctive Relief to Stop City Interference on School Projects
- ❑ Affected Projects:
 - Heritage School (New School Construction)
 - Tustin HS Science Addition (New Construction)
 - Tustin HS Quad Upgrade (Modernization)
 - Future Projects within City of Tustin

The Issue

- ☐ Tustin USD had Built and/or Remodeled Schools in Tustin, the County of Orange, and Irvine land Without Issue for the past 17 Years
- ☐ City of Tustin Ordinance Exempted Public School Districts from Obtaining Grading Permits
- ☐ City of Tustin's new Position was to Treat Tustin USD as a Private Developer Rather than a School District

New Demands

- ❑ Tustin USD must Submit a WQMP, Grading Plans, and Apply for a Grading Permit on School Construction Projects
- ❑ Grading Permit Would Then Tie District to new Requirements (“Discretionary” Land Use Approval):
 - Execution of a Landscape Maintenance Agreement
 - Landscape Easement Dedication (at No Cost) for Future City Project
 - Construction & Demolition Waste Recycling Reduction Plan (WRRP) – Exempt by City Code, Section 4351
 - City Inspections Rather than DSA Inspectors
 - City Title Blocks – General Notes

Implications

- ❑ Grading Permit Process would Create Costly Delays and Unnecessary Hold-ups
- ❑ Example: Heritage School
 - District had Secured All Necessary Approvals to Build; However, City created Numerous Roadblocks & Delay Tactics in Its “Grading Review”
 - District had Secured Construction Bids and Stood Ready to Proceed
 - District was Faced with Adhering to Strict Timeframes & Conveyance Restrictions set forth by Department of Navy (Could not Afford to Stand Down – Risk Losing Land)
 - City Threatened to Assess Contractors With Double Fines if they were to Proceed, Yet they Wouldn’t Release the Necessary Approvals
 - City Without Justification Held Approval of WQMP’s (Submitted as a Courtesy) – Followed up by Reporting District to SARWQCB

Status

- ☐ Trial Continued to November 14, 2011
- ☐ City of Tustin Recently Eliminated Public School District Exemption from Grading Ordinance
- ☐ Heritage School and Phase I of Tustin HS Projects were Completed last Month
- ☐ Tustin USD will Proceed with Projects and Customary Practice relating to City Submittals

Feedback

- ☐ Questions?
- ☐ Roundtable Discussion
- ☐ Similar (Known) Issues Across the County or State?