

I. CASE INFORMATION

A. Titles of Related Actions

1. *Santa Ana Unified School District, et al. v. City of Tustin, et al.* (Case No. 01CC02595), Orange County Superior Court, filed on February 22, 2001 (the “CEQA/AB 212Action”);
2. *Santa Ana Unified School District, et al. v. City of Tustin, et al.* (Case No. 01-3426 WJR (CTx)), U.S. District Court, Central District of California, filed on April 16, 2001 as a class action lawsuit (the “Title VI Racial Discrimination Action”);
3. *City of Tustin, et al. v. All Persons Interested in the Matter* (Case No. 02CC01953), Orange County Superior Court, filed on January 23, 2002 (the “Validation Action”);
4. *Tustin Local Redevelopment Authority for the U.S. Marine Corps Air Station, Tustin, et al. v. Bill Lockyer, et al.* (Case No. CIV.S-02-0382 LKK PAN), United States District Court, Eastern District of California, filed on February 20, 2002 (the “Federal Preemption Action”).

B. Topic

Dispute arising out of the attempt by the City of Tustin (“Tustin”) to exclude the Santa Ana Unified School District (“SAUSD”) from receiving any land for new school sites at the former Marine Corps Air Station at Tustin, California (“MCAS-Tustin”). The two lawsuits filed by SAUSD involved claims based on alleged (1) violation of special land use statute (AB 212) regarding the future development of MCAS-Tustin; (2) racial discrimination in violation of Title VI of the Civil Rights Act of 1964; (3) violation of the California Environmental Quality Act; and (4) violation of the National Environmental Policy Act. The two lawsuits filed by Tustin related to the same subject matter.

C. Settlement Information

On December 27, 2002, the City of Tustin (“Tustin”) paid the sum of \$60 million in cash to the Santa Ana Unified School District (“SAUSD”) to settle claims regarding Tustin’s breach of an earlier settlement agreement entered into in May 2002. Under the earlier agreement, Tustin had agreed to pay SAUSD the sum of \$38 million no later than May 31, 2002, and to provide SAUSD with a 22-acre parcel of land at MCAS-Tustin to use as a site for a new K-8 school. If the parcel proved too contaminated to use as a school site, Tustin promised to make an additional payment of \$22 million to SAUSD no later than 12 months after SAUSD rejected the parcel. In addition, Tustin agreed to cause a \$60 million standby letter of credit to be issued to SAUSD by August 14, 2002, to secure Tustin’s monetary obligations under the settlement agreement.

SAUSD had intended to use the \$60 million letter of credit as collateral for a bridge loan which its bank had approved to provide SAUSD with the necessary funds to immediately begin constructing new schools and renovating existing schools to ease the horrendous overcrowding that has long plagued SAUSD's students--92% of whom are Hispanic. Tustin had agreed that, until the letter of credit was issued to SAUSD, Tustin would neither zone, nor sell, any property at the base.

Unfortunately, Tustin reneged on its promise to provide the letter of credit and then tried to aggressively push forward with a plan to zone and sell land at the base to third-party developers, despite SAUSD's strong objections. SAUSD was forced to go to court in November 2002 and succeeded in obtaining a TRO to enjoin Tustin from zoning or selling land at MCAS-Tustin until SAUSD could obtain a hearing on a C.C.P. § 664.6 motion to enter judgment on the settlement agreement, including a permanent injunction against Tustin. SAUSD also obtained an order for expedited discovery to find out the true facts underlying Tustin's failure to obtain the letter of credit.

At the hearing on SAUSD's section 664.6 motion held on December 2, 2002, the Court issued a tentative ruling to grant SAUSD's motion after finding that Tustin had not used its best efforts to obtain the letter of credit as required under the settlement agreement. After the Court proposed that the parties attempt to resolve the matter during a three-hour recess in the proceedings, settlement negotiations proved fruitful and ultimately culminated in an agreement for Tustin to accelerate all cash payments due to be paid to SAUSD.

On December 27, 2002, as a result of a note purchase transaction between Tustin and Salomon Smith Barney, Tustin paid \$60 million in cash to SAUSD, resulting in a savings of at least \$1 million in interest charges that SAUSD would have otherwise incurred if it had been forced to borrow funds for school construction purposes pending receipt of the settlement payments in May and October of 2003. Receiving the \$60 million early obviated the need for SAUSD to obtain a bridge loan and enabled SAUSD to immediately go out to bid on several new school projects that were desperately needed.

II. ATTORNEYS

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III. SUMMARY OF THE CASE

The four interrelated actions which were settled in May 2002--and then were "resettled" just last month--arose out of the refusal of Tustin to provide SAUSD with any land at MCAS-Tustin to build new school facilities, even though 150 acres at the base fell within the district boundaries of SAUSD.

In the early 1990's, the federal government designated MCAS-Tustin for closure and appointed Tustin as the Local Redevelopment Authority responsible for developing a Reuse Plan which balanced the needs of all communities adversely affected by the closure and civilian reuse of MCAS-Tustin. As part of the process involved in developing a Reuse Plan for MCAS-Tustin, SAUSD applied for a no-cost public benefit conveyance of 75 of the more than 150 acres of land at MCAS-Tustin which fall within SAUSD's attendance boundaries.

Recognizing that SAUSD is one of the most severely overcrowded school districts in all of California, the U.S. Department of Education approved SAUSD's application and recommended that Tustin's Reuse Plan include a public

benefit conveyance to SAUSD. However, the Reuse Plan which Tustin developed failed to provide SAUSD with any land at MCAS-Tustin whatsoever. Instead, Tustin's Reuse Plan included public benefit conveyances of approximately 200 acres of land to two other school districts and a community college district which do not suffer from the same severe overcrowding that exists in SAUSD's schools and have relatively small Hispanic student populations compared to SAUSD's enrollment of 62,000 students--almost 92% of which are Hispanic.

SAUSD commenced the actions in both state and federal court asserting claims under, among other things, the California Environmental Quality Act ("CEQA") and Title VI of the Civil Rights Act of 1964. In the state court action, SAUSD alleged that Tustin violated CEQA by, among other things, failing to identify and properly mitigate the environmental impacts--such as exacerbating SAUSD's overcrowding--which are associated with Tustin's Reuse Plan for MCAS-Tustin. In the federal court action, SAUSD alleged that Tustin violated Title VI by adopting a Reuse Plan for MCAS-Tustin which intentionally excluded the Hispanic students of Santa Ana from the educational benefits which would flow from the reuse of MCAS-Tustin.

One of the more unusual aspects of this case is that, during the pendency of the litigation, SAUSD--in the face of Tustin's intense opposition--succeeded in obtaining passage of a bill (AB 212), which was ultimately signed into law by the Governor in July 2002, to prevent Tustin from issuing any land use approvals to develop MCAS-Tustin unless and until SAUSD (together with its original plaintiff, the Rancho Santiago Community College District) was provided with 100 acres of land at the base to use for new schools. When Tustin refused to comply with the new statute, SAUSD amended its mandamus petition in its CEQA lawsuit to add a claim under the new law to invalidate Tustin's adoption of its master land use plan for MCAS-Tustin.

As a counter-measure, Tustin filed a validation action in state court to head off the attack that SAUSD had mounted under the new statute. However, SAUSD--with the assistance of the California Attorney General's office--was successful in causing the City's lawsuit to be dismissed. Tustin tried to open a second litigation front by filing an action in U.S. District Court in Sacramento against Attorney General Bill Lockyer and others to obtain a ruling that the U.S. Navy's approval of Tustin's Reuse Plan for MCAS-Tustin had somehow preempted any action by the California Legislature to aid SAUSD. That suit never progressed very far and was dismissed as part of the global settlement reached by the parties in May 2002.

When the trial judge in SAUSD's state court suit overruled Tustin's demurrer and signaled his willingness to rule on the constitutionality of AB 212, Tustin quickly came to terms to avoid the prospect of having to provide SAUSD with 100 acres of land at the base for a new elementary school, middle school, and high school. As explained above, however, Tustin failed to honor the terms of the settlement and SAUSD was forced to go back to court. With a little divine

intervention in the form of extremely helpful deposition witnesses from the bank that had been willing to provide the \$60 million letter of credit, SAUSD was able to expose Tustin's secret efforts to sabotage the letter of credit negotiations. The Court was persuaded by this evidence and was poised to enter judgment against Tustin when the above-described settlement was reached.