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CHECKLIST APPROVAL OF DESIGN PLAN CONFORMING TO GUIDELINES ESTABLISHED UNDER SPECIFIC PLAN CONSTITUTES A MINISTERIAL ACT UNDER CEQA

Health First v. March Joint Powers Authority (Tesco Stores West, Inc.), ___ Cal. App. 4th ___ (June 10, 2009, No. RIC458367)

By [*Katharine E. Allen*](#)

The California Court of Appeal for the Fourth Appellate District determined that the act of reviewing and approving a design permit application for a warehouse facility by the March Joint Powers Authority (the "Authority") in accordance with the Specific Plan for the March Business Center constituted a ministerial act and thus did not require further environmental review under the California Environmental Quality Act ("CEQA"). In reversing the trial court's holding on this issue, the Court of Appeal emphasized the Authority's use of fixed standards and objectives embodied in a checklist for conformance with certain Design Guidelines established under the Specific Plan and the lack of any discretionary or subjective judgment in granting approval. The Court of Appeals also briefly addressed lesser issues relating to the application of certain mitigation measures called for in the Specific Plan to the development of the facility and the standing of the plaintiff in the trial court.

This case involved the proposed development of a large warehouse facility for Tesco Stores West, Inc. ("Tesco") located on what was formerly the March Air Force Base. Beginning in the mid-1990's, the Authority initiated a reuse plan for March Air Force Base. The General Plan for the proposed development of the property was completed in 1999 and included a comprehensive CEQA review. To facilitate development, the General Plan provided for the use of individual specific plans for various components of the contemplated development of the property, together with a design review process. Pursuant to the General Plan, the Authority subsequently adopted the Specific Plan for the March Business Center in 2003, which contemplated a build-out of approximately 370 acres of land for industrial use. Prior to approval of the Specific Plan, a second CEQA review was conducted, which evaluated the anticipated land uses and intensities, traffic, air quality and other environmental impacts for the proposed build-out. The Authority also adopted the March Business Center Design Guidelines (the "Design Guidelines"), which set forth specific design requirements for any development within the March Business Center and included a checklist of 125 yes-or-no questions to be used to evaluate individual design plans. An Implementation Committee was then created to review individual design plans for compliance with the Design Guidelines.

In June of 2006, Tesco submitted a Design Plan Application (the "DPA") for its warehouse facilities to the Authority for approval. Tesco supplemented its application by a letter to the Authority explaining how the facility was consistent with the Specific Plan and the corresponding environmental impact report and asserting that these consistencies exempted it from requiring further environmental review. The Authority agreed and scheduled the application for ministerial review. The Implementation Committee approved the DPA on September 11, 2006. The facility was completed in 2008.

Prior to completion, Health First, a citizens' group, filed a petition for writ of mandate challenging the approval of Tesco's DPA under CEQA. The Superior Court of Riverside County granted the writ petition, finding that approval of the DPA was a discretionary act that required further environmental review.

Health First alleged that the Authority improperly classified the review and approval of Tesco's DPA as a ministerial action, as opposed to a discretionary action which would require comprehensive environmental review under CEQA. The Court of Appeal employed a de novo standard of review and conducted its own independent investigation of the administrative record to determine whether the Authority erred in determining that the evaluation of the DPA was exempt from CEQA review. Based on its investigation, the Court of Appeal concluded that the Authority's approval of Tesco's DPA was ministerial. In so holding, the court noted the nature of the review conducted by the Implementation Committee, which involved little or no personal judgment on the part of those approving the application. Review of the DPA was limited to confirming its consistency with the requirements, fixed standards and mitigation requirements set forth in the Specific Plan and corresponding environmental impact report and the Design Guidelines. In particular, the court noted that the Implementation Committee performed its review by completing a checklist, which the court compared to the check-the-box systems used in connection with the ministerial actions of issuing a building permit or approving a final subdivision map. Given the nature of the review, the court concluded that the approval of Tesco's DPA was in fact a ministerial act which was exempt from CEQA review.

Health First next asserted that the Tesco facility and the March Business Center Specific Plan were not the same project and thus the DPA required further environmental review under CEQA. The Court of Appeals summarily rejected this contention. In particular, it noted that the Tesco facility was smaller in size than the area approved for industrial uses under the Specific Plan and it had fewer environmental impacts than those analyzed and approved under the Specific Plan. Furthermore, no special or additional impacts not previously analyzed in the Specific Plan were presented by the Tesco facility. Thus, the court found that the record supported the conclusion that the facility was part of the same larger project contemplated under the Specific Plan and no additional CEQA review was required.

The court also briefly addressed Health First's additional claims that (i) the Tesco facility did not comply with the mitigation plan adopted as part of the Specific Plan, and (ii) the implementation of the Specific

Plan's mitigation measures to the Tesco facility was discretionary because the measures were not specifically incorporated as part of the DPA approval. The court found that the record contradicted both of the foregoing claims, emphasizing that approval of the facility was given subject to the exact same mitigation measures contained in the Specific Plan. Further, the court found that the fact that the mitigation measures applied to the facility without modification invalidated Health First's claim that the implementation of those measures was discretionary.

Lastly, the court independently raised the issue of whether Health First even had standing to bring the writ of mandate in the trial court. While the trial court did not render a final opinion on this issue, it emphasized that any challenge to the Specific Plan for the March Business Center should have been raised during the 2003 CEQA review process and noted that Health First offered no comments during that public review process.

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