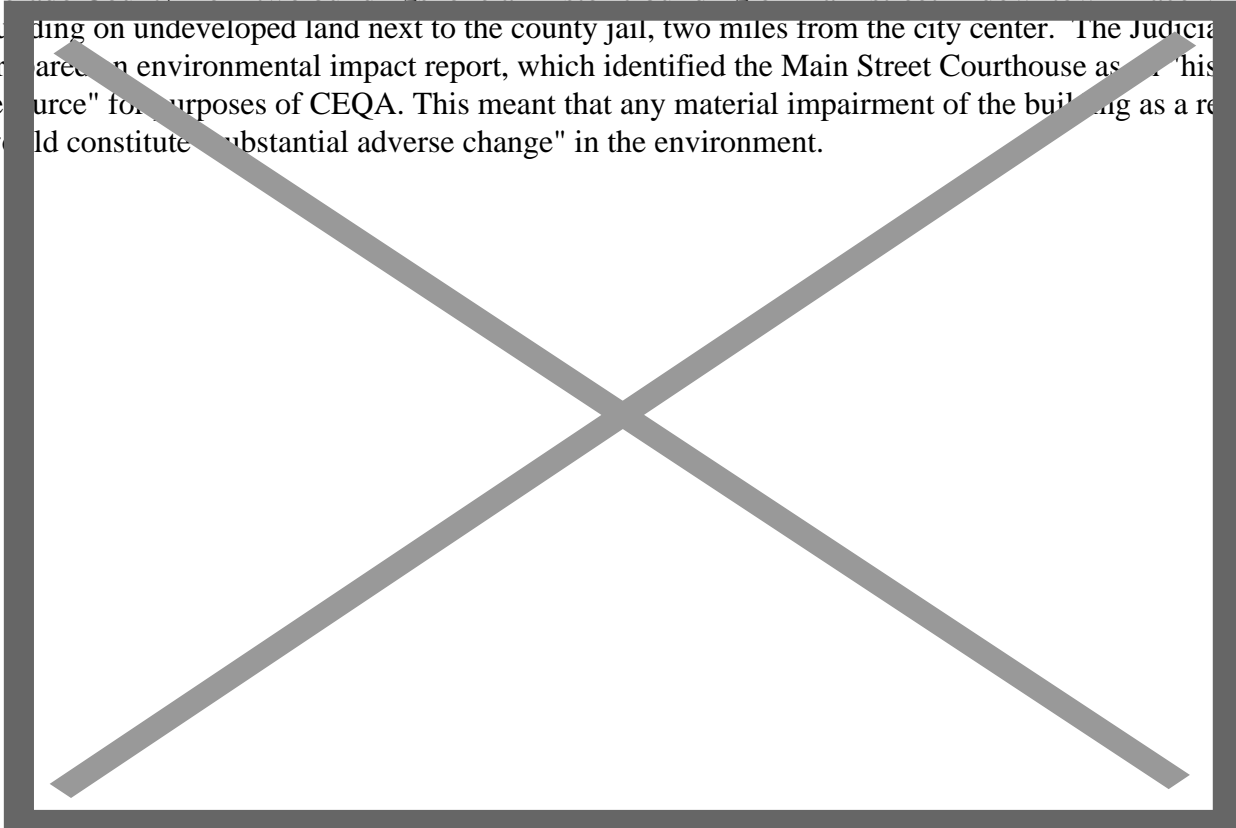


## **“Urban Decay” Not Reasonably Foreseeable Consequence of Relocating Courts from Historic Downtown Courthouse**

Citing the likelihood of repurposing Placerville's historic downtown courthouse and evidence nearby businesses were not dependent on it, the First District Court of Appeal held that "urban decay" was not a reasonably foreseeable consequence of moving judicial activities from downtown to a new building in the outskirts of the city. *Placerville Historic Preservation League v. Judicial Council of California* (1st Dist. 2017) 16 Cal. App. 5th 187 (2017). The defendant, the Judicial Council of California, planned to consolidate all judicial activities in El Dorado County from two buildings—one an historic building on main street in downtown Placerville—to a new building on undeveloped land next to the county jail, two miles from the city center. The Judicial Council prepared an environmental impact report, which identified the Main Street Courthouse as a "historical resource" for purposes of CEQA. This meant that any material impairment of the building as a result of the move would constitute "substantial adverse change" in the environment.



To save the

historical resource, the Judicial Council worked with the city and county to establish a committee to explore potential re-use and repurposing of the historic courthouse. And to avoid material impairment, the draft EIR required that any new use of the building retain significant character-defining features of the building compatible with its historic character. The EIR acknowledged that the withdrawal of judicial activities from the downtown area could affect downtown Placerville. However, it concluded that blight or "urban decay" was unlikely to result because of the city and county's commitment to repurposing the historic courthouse building and because there were numerous office, retail and commercial businesses in the area which did not rely on courthouse operations. The Placerville Historic Preservation League disagreed, and filed a petition challenging the

certification of the EIR. It argued that the EIR's evaluation of significant environmental effects was deficient because its conclusion that urban decay would not result was not supported by substantial evidence. The court ruled in favor of the Judicial Council and found that there was substantial evidence supporting its conclusion that urban decay was not reasonably foreseeable. It noted that businesses come and go, and that one commenter told the Judicial Council that 38 downtown businesses had closed in the last three years, indicating the district's resilience and ability to survive turnover without physical deterioration. The court emphasized that urban decay is a relatively extreme economic condition, and that there was no evidence to suggest it would occur due to the withdrawal of judicial activities from the downtown area. The court also stated that a "well-grounded probability" that the city and county would follow through on its commitment to repurpose the historic building was sufficient to support the Judicial Council's conclusion, and that there was no legitimate evidence that nearby businesses were so dependent on the activities of the historic courthouse that urban decay would result from its move. Significantly, the court found that repurposing the building was not a CEQA mitigation measure, but a circumstance informing the project's foreseeable effects which, in this case, did not necessitate mitigation in part because it was highly likely the building would be reused. The court also distinguished *Bakersfield Citizens for Local Control*, a key case, decided in 2004, in which the court found the EIR insufficient in addressing the economic impact of locating two new WalMart supercenters in the city. In *Bakersfield*, the court stated, the lead agency disregarded the risk of urban decay altogether, whereas here, the agency addressed the issue and concluded that urban decay was not a reasonably probable result. Furthermore, the court noted that there was ample evidence in *Bakersfield* which supported the concern that the projects would lead to urban decay (e.g., an economic study commissioned by the petitioners, citations to numerous other studies of the adverse effects of supersized retailers in other communities, and numerous comments submitted related to the risk of urban decay). The Placerville court found no such evidence. Perhaps most importantly, the court highlighted the difference between the construction of two supercenters which would siphon business from small shops and cause risk of widespread business failures (*Bakersfield*), and the relocation of government functions which might reduce some commercial activity but would be offset by re-purposing the courthouse with other activities (*Placerville*).

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