

## Size Limit on Retail Tenants Not Likely to Cause Urban Decay

A general plan policy that limited the size of retail tenants in certain areas of a city was not likely to cause urban decay and was not inconsistent with other general plan policies encouraging infill development, the court of appeal held in *Visalia Retail, LP v. City of Visalia*, 20 Cal. App. 5th 1 (2018). The City of Visalia's general plan update included a policy that Neighborhood Commercial areas should be anchored by a grocery store and could not have individual tenants greater than 40,000 square feet. Visalia Retail, which owned property designated Neighborhood Commercial, filed a petition for writ of mandate seeking to invalidate the city council's certification of the EIR and adoption of the general plan update. Visalia Retail argued that the EIR should have analyzed the potential for the tenant size cap to cause urban decay and that the general plan was internally inconsistent. The superior court ruled in favor of the city, and the court of appeal upheld the superior court's decision.

**Potential for Urban Decay** The petitioner argued that the EIR should have analyzed the potential for urban decay to result from the tenant size cap. The petitioner had submitted a report from a real estate broker that explained the policy would likely lead to vacancies, physical blight, and urban decay because, in his opinion, it was unlikely a grocery store anchor would be willing to lease a space that was smaller than 40,000 square feet. In support, the real estate broker stated in his report that (1) he was personally unaware of any grocers willing to build new stores under 40,000 square feet, (2) a typical grocery store for four grocery chains must be at least 50,000 square feet to be profitable, (3) 10,000–20,000-square-foot stores launched by a large grocery chain had been unsuccessful, and (4) three grocery stores in Visalia under 40,000 square feet had closed. While an EIR does not need to study economic and social changes resulting from a project, physical changes to the environment that are caused by a project's economic or social impacts are environmental effects that must be considered under CEQA. The court of appeal concluded that the real estate broker's report did not provide substantial evidence that the 40,000-square-foot limit would cause urban decay in the form of significant physical effects on the environment. The court explained that the real estate broker's report did not support an argument that no grocers would be willing to build stores under 40,000 square feet. The court noted that the report's conclusion was based only on the real estate broker's personal knowledge, the typical store size for four grocery chains, and one chain's experience with stores under 20,000 square feet. The court also noted that the report indicated that some grocers in some circumstances had built stores under 40,000 square feet, which contradicted the real estate broker's conclusion that no grocers would build stores under 40,000 square feet. Moreover, the court noted that the report did not provide a reason why the three stores in Visalia under 40,000 square feet had closed. Finally, the court determined that the real estate broker's report did not demonstrate that any vacancies in Neighborhood Commercial areas as a result of the tenant size cap would be so rampant as to cause urban decay.

**General Plan Consistency** The petitioner also argued that the general plan was internally inconsistent. The petitioner claimed that the 40,000-square-foot limit conflicted with eight other policies and goals in the general plan, including a goal to promote infill development. The court of appeal rejected the petitioner's argument. The court concluded that the city council could have reasonably concluded that the tenant size cap would not impede infill development because tenants larger than 40,000 square feet were permitted in other areas of the city. The court also explained that the city could reasonably decide to restrict the nature of infill development in some areas in order to pursue other goals, such as encouraging smaller businesses or promoting pedestrian-oriented retail: "In sum, just because the general plan declares a goal of promoting infill development does not mean *all* of its policies must encourage *all* types of infill development. General plans must balance various interests, and the fact that one stated goal must yield to another does not mean the general plan is fatally inconsistent. Few, if any, general plans would survive such a standard."

# California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic](#). [Subscribe ?](#)

[View the blog](#)