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Business

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Ficus Fight Highlights Role Activists Can Play in Economic Development

By Gabe Friedman
Daily Journal Staff Writer

LOS ANGELES — For most people in Southern California, the city of Commerce is just an exit off Interstate 5, home to a factory outlet mall called the Citadel and known by the glowing lights of the Commerce Casino.

But a legal battle over ficus trees shows how residents of this industrial city east of downtown Los Angeles aim to gain a larger role in shaping the regional economy.

A year-long fight over whether the city could chop down 990 ficus trees, whose vigorous root systems pull up pavement on Commerce's major streets and boulevards, reached a draw last Friday. Judge James C. Chalfant of the Los Angeles County Superior Court finalized his decision, telling city officials to comply with state environmental statutes before removing more ficus trees.

The plaintiff, East Yard Communities for Environmental Justice, an advocacy group for residents, received half of its request: The city stopped cutting down trees, a filter for the air pollution blowing off two rail yards and two major freeways running through Commerce. But because the city voided the project, it won't conduct the environmental impact report on air quality that plaintiffs' lawyers said they wanted.

"This was about forcing the city to act more professionally the next time," said Gideon Kracov, an attorney who represented East Yard Communities in the suit.

Economists say residents of the small industrial city east of downtown Los Angeles will have many more opportunities to demand environmental studies in the future. Increased freight

traffic at the rail yards here, driven by expansion at the ports of Los Angeles and Long Beach, will require large infrastructure improvements.

The expansion could create 1 million new jobs in the region by 2020, according to reports by the Southern California Association of Governments, a regional planning agency.

But increased pollution could create new health risks for the more than 13,000 residents in Commerce. New studies that reveal increased health risks around rail yards could help those in cities like Commerce make their case as they try to prevent further health impacts.

"They could stop everything," John Husing, an economic consultant for the Southern California Association of Governments, said about residents close to rail yards and ports. "They could stop the creation of infrastructure — that's where they really have the leverage."

Husing explained that residents can control the process by challenging the environmental review of infrastructure improvements needed for expansion, through litigation and with politicians. Details about the health impacts of living near rail yards bolster their position, he explained.

In the trees case, Kracov filed a lawsuit on behalf of Commerce residents after the city failed to even question whether the project would have an environmental impact. The California Environmental Quality Act requires that city officials, at minimum, state that a project would not have significant environmental impacts.

Eduardo Olivo, interim city attorney, argued for an exemption, calling the removal of 990 trees a street maintenance project. He also said the city planned to find replacement trees

with less destructive roots.

Chalfant disagreed, and now all that remains is a ruling on whether Kracov should receive attorney fees.

"There is no doubt that ficus trees are a menace to sidewalks and curbs," Chalfant wrote. "A plan to remove and replace them with less destructive trees may be good policy. That fact does not relieve the city of its obligation to adhere to the requirements of" the California Environmental Quality Act. *East Yard Communities v. Commerce*, BS 100444 (L.A. Super. Ct., filed 2005).

Kracov said he was disappointed Chalfant did not force the city to conduct an environmental impact report, and added the city has always refused to consider the health impacts of removing close to 1,000 trees. Rather than conduct a study, it reluctantly voided the ficus tree removal project.

"We had to drag them to court to do this, get a preliminary injunction and only then did they say, 'OK, fine,'" said Kracov about the city's response.

With Southern California ports playing an increasing role in the national economy, residents will need evidence to show increased traffic through their communities impacts health.

Containers arriving at the ports of Los Angeles and Long Beach are transported to the rail yards in Commerce, where they are loaded onto freight trains for eastbound delivery.

Already, the ports handle 41.5 percent of all cargo containers in the U.S., Husing said. Port traffic is expected to grow, he said, from 13.1 million containers handled in 2004 to more than 36 million by 2020.

Ultimately, Husing said, companies that receive goods from the ports, such as Wal-Mart and Costco, have

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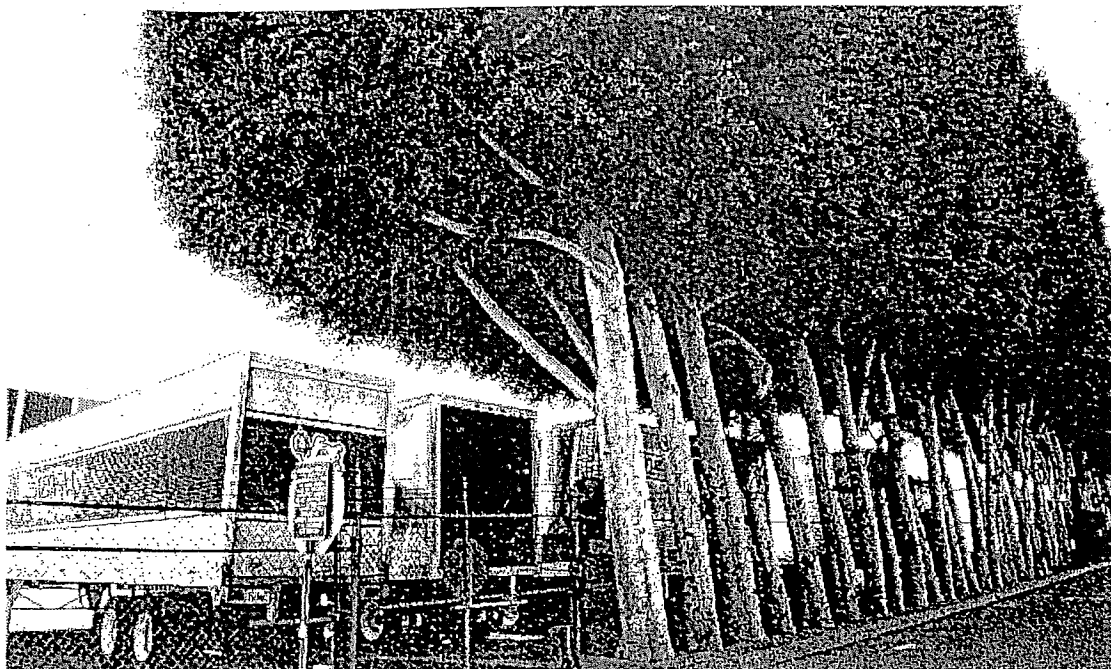
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ANNE MARIE RUFF / Daily Journal

A fight over whether the city of Commerce could chop down 990 ficus trees, whose vigorous root systems pull up pavement on the city's major streets and boulevards, has ended with the city voiding its project.

an economic interest in paying for cleaner technology to expedite the expansion. When that happens, the region will benefit from the creation of higher-paying blue-collar jobs.

"The role [the communities] really play is to make sure that the health impacts from growth are on the agenda," Husing said.

Kracov, who said environmental justice cases compose a third of his practice, initially started out defending oil and gas companies in environmental contamination cases as a summer associate at Weston Beshoof Rochefort Rubalcava & MacCuish in Los Angeles. He joined L.A. City Attorney Rocky Delgadillo's office in 2002, where he met many of his current clients on lobbying trips to Sacramento or while working on city environmental cases.

While there, he helped negotiate a \$168 million settlement in a lawsuit brought by both the city and the county of Los Angeles against state

pollution regulators over trash in the Los Angeles River. The settlement requires the city and the county cut the amount of trash flowing into the Ballona Wetlands by 2008.

In 2004, Kracov opened a solo practice. Now, he also counsels businesses on environmental compliance issues, and works on contract for Rose, Klein & Marias, a plaintiffs' side environmental firm in downtown Los Angeles where he rents office space. But helping residents in cities like Commerce "is why I became a lawyer," he said.

His client in the trees case, Angelo Logan, director of East Yard Communities, said Commerce and surrounding communities are at a critical moment before expansion at the rail yards begins.

The California Air Resources Board conducted its first health risk assessment to estimate cancer risk from diesel exhaust at a rail yard in Northern California. It is now conducting similar health risk assessments for

rail yards in Southern California cities, including Commerce.

The 2004 study found cancer risks were more than 35 times greater than its rules allowed, said Jerry Martin, a spokesman for the California Air Resources Board.

So far, the accuracy of that study has not been challenged, Martin said. But he added that challenges to future studies are more likely because Burlington Northern Santa Fe and Union Pacific railways are conducting those studies with his agency's oversight.

"My guess is that some of those will be challenged," he said. "It certainly is a distinct possibility."

Logan, who sits on three advisory boards related to the movement of goods from the port, said the only way to protect residents' health is through new studies

"We're already at elevated risks for cancer," Logan said. "We don't want to be the guinea pigs, we want them to take precaution now."