S194708

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SIERRA CLUB,

Petitioner

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE,

Respondent.

COUNTY OF ORANGE,

Real Party in Interest.

After A Decision By The Court Of Appeal
Fourth Appellate District, Division Three, Case No. G044138
(195 Cal.App.4th 1537, 125 Cal.Rptr.3d 913)
Denying A Petition for An Extraordinary Writ To The Superior Court
For the County of Orange, Case No. 30-2009-00121878
Honorable James J. Di Cesare, Judge

ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA CASES

FEDERAL CASES

STATUTES

California Evidence Code

California Government Code

California Code of Civil Procedure

California Health & Safety Code

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

LEGISLATIVE HISTORY

INTRODUCTION

This action arose from a request by Petitioner the Sierra Club ("Sierra Club") under the California Public Records Act ("PRA") to obtain the Orange County Landbase (the "OC Landbase") in a computer mapping system, or what is now known as a geographic information system ("GIS"), file format from Real Party in Interest County of Orange ("County"). A GIS is an integrated collection of geographic data and software. A record must be in a GIS file format to take advantage of the functionality of a computer mapping system.

The OC Landbase is a parcel-level digital basemap identifying over 640,000 parcels in Orange County. The information in the OC Landbase is compiled from non-GIS formatted records such as tract maps and deeds submitted to the County Surveyor, which are then inputted into the OC Landbase by County staff. The compilation and maintenance of the OC Landbase costs the County over $700,000 annually.

The County responded to the Sierra Club's request by agreeing to produce non-GIS formatted records, including records in electronic formats like Adobe PDF, which contained the same information stored in the OC Landbase. These non-GIS formatted records were also offered to the Sierra Club for copying at the cost of duplication.

The County licenses the OC Landbase in a GIS file format to the public for a licensing fee. By recouping some of the costs of maintaining the OC Landbase from those who specifically benefit from the functionality of a computer mapping system, the County mitigates the fiscal burden of maintaining the OC Landbase on taxpayers.

The County licenses the OC Landbase pursuant to the computer mapping system exemption contained in Section 6254.9 of the Government

Code.[1] Section 6254.9, subdivision (a), states that "computer software" is not a public record under the PRA. Subdivision (b) of Section 6254.9 defines "computer software": "As used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems."

The legislative history of Section 6254.9 confirms that "computer software" was the term being defined in the statute, not "computer mapping system." Moreover, the legislative history establishes that Section 6254.9's purpose was to enable local agencies to recoup the costs of maintaining computer mapping systems by licensing the components of such systems. The County's practice of licensing the OC Landbase in a GIS file format is consistent with this intent.

In proceedings before Respondent Superior Court (the "trial court"), the Sierra Club disputed evidence that the OC Landbase is part of a computer mapping system. After a two-day evidentiary hearing, the trial court factually found that the OC Landbase data, which is in a GIS file format, constitutes part of a computer mapping system. The trial court ruled that the OC Landbase in a GIS file format is not a public record under the PRA and need not be produced to the Sierra Club in that format. The Court of Appeal affirmed this ruling in a comprehensive, published opinion.

For the reasons set forth in this brief, the County requests that this Court affirm the Court of Appeal's decision.

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[1] All statutory references are to the California Government Code unless otherwise indicated.

STATEMENT OF THE ISSUE

Does Government Code section 6254.9 exempt a computer mapping system, including the data in a GIS file format, from disclosure under the California Public Records Act?

STATEMENT OF THE CASE

A. Factual Background

1. The OC Landbase data, which is in a GIS file format, is part of a computer mapping system

The OC Landbase refers to the County's parcel geographic data in a GIS file format. (5 PA 1083, 1348.) "GIS file format" means that the geographic data can be analyzed, viewed, and managed with GIS software, and it includes formats such as ESRI Shape Files, MGE, and Oracle Spatial. (RT 118; 5 PA 1083, 1349.)

The OC Landbase includes over 640,000 parcels in Orange County with geographic boundaries of parcels, Assessor Parcel Numbers (APN), street addresses, with links to text information such as the names and addresses of the owners of the parcels. (5 PA 1083, 1348.) The OC Landbase was jointly developed by the County and the Southern California Gas Company. (RT 182-183; 5 PA 1168-1174, 1348.) The data in the OC Landbase is compiled from legal maps and records submitted to the County Surveyor, which are then inputted into the OC Landbase by County staff. (RT 164-168, 171, 191; 4 PA 789; 5 PA 1083, 1348.) These records include tract maps, parcel maps, records of survey, deeds and ordinances. (RT 164-168, 171, 191; 4 PA 789; 5 PA 1083, 1348.)

The OC Landbase data, which is in a GIS file format, constitutes a part of a computer mapping system. (RT 200; 4 PA 789-791; 5 PA 1083,

1348-1349; 2 RPA 119-121.) "Computer mapping system" is another term for geographic information system or "GIS." (RT 104, 107-108, 118-119, 198-200; 3 PA 527-529, 532; 4 PA 789-791; 5 PA 1083, 1349; 2 RPA 119-121.) A geographic information system is an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes. (RT 109-112, 133-134, 193-198; 4 PA 789-791; 5 PA 1306-1307, 1317, 1349; 1 RPA 75-76; 2 RPA 119-121.)

A computer mapping system does not consist solely of software. It consists of both software and data. Specifically, the OC Landbase is a part of a Land Information System or "LIS," which is a type of GIS that deals with property parcel data. (RT 184-186, 189-190; 3 PA 527; 4 PA 789; 5 PA 1349; 2 RPA 119.)

2. The County agreed to produce non-GIS formatted records containing the information stored in the OC Landbase

The Sierra Club sought production of the OC Landbase in a GIS file format from the County. (RT 73; 1 PA 11; 5 PA 1082-1083, 1163, 1349.) The County agreed to produce non-GIS formatted records to the Sierra Club that contained the information stored in the OC Landbase. (RT 166-167, 171-73, 177-180; 5 PA 1082-1083, 1113-1114, 1118-1119, 1124-1125, 1350.) The County agreed to produce these non-GIS formatted records at the cost of reproduction. (5 PA 1083, 1113-1114, 5 PA 1118-1119, 5 PA 1124-1125, 1350.)

The Sierra Club sought the production of the OC Landbase in a GIS file format so that it could use GIS software to read, analyze, display and manipulate the OC Landbase. (RT 118-119; 5 PA 1083, 1349). The Sierra

Club could not use the analytical, display and manipulation functions of its GIS software if the County produced paper or other non-GIS formatted records containing the information stored in the OC Landbase. (RT 118-119; 5 PA 1084, 1349.) Geographic data must be in a GIS file format in order for a computer mapping system to process the data. (RT 118-119; 3 PA 528-529; 5 PA 1084, 1349.)

3. The County licenses the OC Landbase for a fee to recoup some of the costs of maintaining it

The County produces the OC Landbase in a GIS file format to members of the public, if they pay a standard licensing fee and agree to the license's restrictions on disclosure and distribution. (5 PA 1083, 1349-1350.) These fees are used to recoup some of the significant costs that the County incurs to develop, maintain and update the OC Landbase.[2] (RT 111, 114-116, 119, 123-125; 2 PA 313, 318-319, 406-414.)

Over a period of five years, the County spent a total of $3,560,354 in maintenance costs for the OC Landbase, which is an average of $712,071 annually. (2 PA 318, 408.) Much of these costs are attributable to County staff time spent posting and updating the OC Landbase. (2 PA 308, 408.)

Approximately 26 percent of these costs ($183,530 annually over five years) are paid with the license fee revenue the County charges to users

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[2] On December 13, 2011, Orange County adopted Resolution No. 11-196, which substantially reduces licensing fees for the OC Landbase in a GIS file format. (County Request for Judicial Notice ("County RJN"), Ex. 2.) The new fee resolution replaces the fee resolution that was in effect during the proceedings below. (County RJN, Ex. 2.) In order to comply with Proposition 26, the new licensing fee rates were based on a nationwide survey of what state and local governments charged for similar geographic data in a GIS file format and do not exceed the County's estimated costs. (County RJN, Ex. 2.)

who wish to access and use the OC Landbase in a GIS file format. (2 PA 319, 414; 5 PA 1350.) About 74 percent of the costs are paid from other County funding sources. (2 PA 319, 414; 5 PA 1350.) Without the license fee revenue, the County would need to either subsidize the difference out of taxpayer revenues or significantly cut its OC Landbase maintenance costs, which would lead to a reduction in services. (RT 114-116, 119, 123-125; 2 PA 314.)

B. Procedural History

1. Trial court ruling follows a two-day evidentiary hearing

The Sierra Club filed its petition for writ of mandate with the trial court on April 21, 2009 in which it sought to compel the production of the OC Landbase in a GIS file format. (1 PA 4, 6, 11; 5 PA 1083, 1349.) The County answered on May 20, 2009. (1 PA 75.) The County asserted as its third affirmative defense that the OC Landbase was exempt from disclosure under Section 6254.9. (1 PA 79.)

On November 4, 2009, after the parties briefed the issues, the trial court issued a three-page tentative ruling to deny the Petition. (2 PA 497-499.) At the hearing on November 5, 2009, the Sierra Club alleged that there was no evidence regarding why the OC Landbase should be considered to be part of a computer mapping system and that there was no evidence regarding what is a "computer mapping system." (RT 18-19, 30.)

On December 11, 2009, the Sierra Club applied *ex parte* to continue an evidentiary hearing on the merits. (RPA 1-13.) The Sierra Club argued that it intended to create "a more robust factual and evidentiary record based on the substantial amount of discovery conducted by both parties since the November 5, 2009 hearing." (1 RPA 4.) The trial court granted

the Sierra Club's request for a continuance of the evidentiary hearing. (1 RPA 50.)

On December 23, 2009, the Sierra Club filed a motion entitled "Motion for Order Requesting Additional Briefing." (3 PA 501-522.) The motion contained additional briefing and evidence on the merits. (3 PA 501-522.) Specifically, the motion was accompanied by 13 pages of declarations from the Sierra Club's expert witnesses and additional exhibits. (3 PA 525-542.) The Sierra Club's experts opined at length on whether the OC Landbase is part of a computer mapping system. (3 PA 525-542.)

The litigation culminated in a two-day evidentiary hearing on April 12 and 13, 2010. (RT 36-272.) At the hearing, the Sierra Club elicited lengthy testimony from its expert witnesses regarding the character and nature of computer mapping systems. (RT 43, 54-55, 67-68.) The County cross-examined the Sierra Club's experts on these issues, and presented witness testimony on the same subject. (RT 104, 107-108, 118-119, 198-200.)

On May 21, 2010, the trial court announced its ruling denying the Sierra Club's petition, which would serve as a tentative decision, and ordered the County to prepare a statement of decision. (RT 280-293.) On August 3, 2010, the trial court issued its statement of decision denying the Sierra Club's petition and entered judgment in the County's favor. (5 PA 1347, 1367.)

2. The Court of Appeal's decision

In proceedings before the Court of Appeal, the Sierra Club did not dispute that there was substantial evidence supporting the trial court's

factual findings, which are detailed within the Court of Appeal's opinion. (Slip. Op., pp. 3-5.) The Court of Appeal noted that "[b]oth parties agree that the OC Landbase is a GIS database," but "[t]hey disagree on whether a computer mapping system, within the meaning of section 6254.9, includes only the GIS computer program, or alternatively, the GIS computer program *and* database." (Slip. Op., p. 7.)

The Court of Appeal affirmed in a unanimous published decision. After thoroughly analyzing the arguments, it held, "[b]ased on our review of the legislative history and purpose of section 6254.9, the Act's statutory scheme, and other relevant statutes, we conclude the County has met its burden of providing that its OC Landbase is part of a computer mapping system and therefore excluded from public disclosure." (Slip. Op., p. 19.)

ARGUMENT

I. STANDARD OF REVIEW

"A trial court's order ... supporting [a public] official's refusal to disclose records under the [PRA] is immediately reviewable by petition to the appellate court for issuance of an extraordinary writ." (§ 6259(c).) Factual findings made by a trial court in a PRA case will be upheld if based on substantial evidence. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336, citing *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 ["Factual findings made by the trial court will be upheld if based on substantial evidence."], see also e.g., *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1277-1278 [substantial evidence supported trial court's factual determination that coroner and autopsy reports constituted investigatory files, thus records were exempt under Section 6254, subdivision (f)'s exemption for investigatory files.].)

Here, the trial court resolved several important facts in the County's favor: (1) that the term "computer mapping system" is an early term for GIS; (2) "GIS" is an acronym for "geographic information system"; (3) "GIS" refers to an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes; and (4) the OC Landbase in a GIS file format is part of a computer mapping system. (5 PA 1348-1351.) These factual findings followed hundreds of pages of declarations and exhibits, and a two-day evidentiary hearing in which the Sierra Club itself elicited lengthy testimony from its expert witnesses regarding the character and nature of computer mapping systems. (RT 43, 54-55, 67-68.)

After finding these facts, the trial court applied Section 6254.9, making applicable the *de novo* standard of review regarding the interpretation of the statute. While the parties clearly dispute the legal significance of the trial court's factual determination that the OC Landbase in a GIS file format constitutes a part of a computer mapping system, the factual finding itself must be reviewed under the substantial evidence standard.

At the Court of Appeal, the Sierra Club did not dispute that substantial evidence supported the trial court's factual findings. Before this Court, however, the Sierra Club ignores these findings and seeks *de novo* review while continuing to dispute facts resolved in the County's favor. (See Sierra Club's Opening Brief on the Merits ("OB"), pp. 8-10, 13.) Nonetheless, the Sierra Club's focus on the appellate court's refusal to ignore the plain language of Section 6254.9 does not transform the issues presented into pure questions of law.

II. SECTION 6254.9 EXEMPTS COMPUTER MAPPING SYSTEMS FROM DISCLOSURE UNDER THE PUBLIC RECORDS ACT

In adopting the PRA, the Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) To implement this right, the PRA requires that public records must be disclosed unless they come within one or more of the categories of records exempt from disclosure. (§ 6253(a); *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282 [the PRA contains a number of exemptions that permit government agencies to refuse to disclose certain public records].)

This case centers on the interpretation of Section 6254.9, which sets forth the specific exemption at issue in this case. Specifically, the parties dispute the interpretation of "computer software" as used in Section 6254.9. Section 6254.9 provides:

> (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.
>
> (b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.
>
> (c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.
>
> (d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.
>
> (e) Nothing in this section is intended to limit any copyright protections.

(§ 6254.9.) Section 6254.9, subdivision (b), defines exempt "computer

software" as used in the statute to include computer mapping systems. Thus, the plain language of Section 6254.9 not only exempts computer mapping systems from disclosure, but expressly authorizes local governments to sell, lease, or license them for commercial or noncommercial use.

After a two-day evidentiary hearing, the trial court factually found that the OC Landbase data, in a GIS file format, is part of a computer mapping system. (RT 200; 4 PA 789-791; 5 PA 1083, 1348-1349; 2 RPA 119-121.) Thus, the OC Landbase is exempt from disclosure under the PRA pursuant to Section 6254.9.

A. Section 6254.9, Subdivision (b), Enlarges The Definition of "Computer Software" As Used In The Section, To Include Computer Mapping Systems

1. The Legislature's definition of "computer software" as used in Section 6254.9 is binding

A court's "fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) "Normally, the first step is to examine the statute's text because the statutory language is generally the most reliable indicator of legislative intent." (*People v. Braxton* (2004) 34 Cal.4th 798, 810.) "If the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts." (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063, citing *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 ["If the Legislature has provided an express definition, we must take it as we find it."] and *People v. Dillon* (1983) 34 Cal.3d 441, 468 ["[W]hen a statute defines the meaning to be given to one of its terms, that meaning is ordinarily binding on the courts."].)

Here, Section 6254.9, subdivision (b), provides: "As used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems."[3] Section 6254.9, thus, statutorily defines exempt "computer software" for the purposes of the statute to include computer mapping systems. (§ 6254.9(b).) The trial court found based in large part on evidence provided by the Sierra Club that the OC Landbase data, in a GIS file format, is part of a computer mapping system. (RT 200; 4 PA 789-791; 5 PA 1083, 1348-1349; 2 RPA 119-121.) Therefore, the OC Landbase is exempt from disclosure under Section 6254.9 as a computer mapping system, because it falls within the statutory definition of "computer software" as used in the section.

The Sierra Club addresses the statutory definition of computer software found in Section 6254.9, subdivision (b), by disregarding it and relying on external dictionary and anecdotal definitions of "computer software." (OB, pp. 13-17.) Indeed, the Sierra Club contends that subdivision (b) only provides "illustrative examples," because "the word 'including' is ordinarily defined as a term of illustration, signifying that what follows is an example of the preceding principle." (OB, pp. 25-26.) Under the Sierra Club's theory, Section 6254.9, subdivision (b), effectively operates to define "computer mapping systems, computer programs, and computer graphics systems," as computer software, rather than the other way around. (See OB, pp. 21-25.)

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[3] Section 6254.9 is not unlike Election Code section 355, which defines "software" to include "all programs, voting devices, cards, ballot cards or papers, operating manuals or instructions, test procedures, printouts, and other nonmechanical or nonelectrical items necessary to the operation of a voting system." In both cases, "software" is given a statutory definition, which differs from a standard dictionary definition of the term.

The Sierra Club's arguments contradict well-established California case law interpreting statutes that are worded like Section 6254.9. California courts interpreting statutory definitions have consistently held that "[t]he term 'includes' is ordinarily a word of enlargement and not of limitation." (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 639; see also *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774; *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582; *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101; *Patton v. Sherwood* (2007) 152 Cal.App.4th 339, 346; *People v. Arnold* (2006) 145 Cal.App.4th 1408, 1414; *Ortega Rock Quarry v. Golden Eagle Ins. Corp.* (2006) 141 Cal.App.4th 969, 982; *Associated Indemnity Corp. v. Pacific Southwest Airlines* (1982) 128 Cal.App.3d 898, 905.) "The statutory definition of a thing as 'including' certain things does not necessarily place thereon a meaning limited to the inclusions." (*People v. Western Air Lines, Inc., supra,* 42 Cal. 2d at p. 639.) Thus, rather than providing illustrative example of "computer software," subdivision (b), operates to enlarge the definition of "computer software" to include, "computer mapping systems, computer programs, and computer graphics systems."

California courts have also repeatedly interpreted statutory definitions that are structured like Section 6254.9 with the term being defined "as used in the section" to include and be enlarged by the definition that follows. (See *Morillion v. Royal Packing Co., supra,* 22 Cal.4th at p. 582 [because "includes" is generally a term of enlargement, the definition of "hours worked" is expanded by, rather than limited to, the time spent when an employee is "suffered or permitted to work"]; *Ornelas v. Randolph, supra,* 4 Cal.4th at p. 1101 [court construed Civil Code § 846, which provides that a "'recreational purpose,' as used in this section,

includes" a long list of activities, and held that the statute was a statutory definition and that "includes" enlarges the definition of the term being defined]; *People v. Arnold, supra,* 145 Cal.App.4th at p.1414 [court holds that "includes" is "ordinarily a term of enlargement rather than limitation" in interpreting Penal Code section 12001, which provides, that in listed sections of the Penal code and Welfare Institutions Code, "the term 'firearm' includes the frame or receiver of the weapon"]; *Patton v. Sherwood, supra,* 152 Cal.App.4th at p. 346 [the phrase "includes any person," as used in Probate Code section 24, subdivision (d), expands the class of persons who may bring an action to enforce a charitable trust].)

The only case cited by the Sierra Club that even appears to support its legal contention is a Ninth Circuit case interpreting a statute that is not structured at all like Section 6254.9, subdivision (b). (OB, p. 26.) In *Arizona State Board for Charter School*, the Ninth Circuit interpreted a provision of the Individuals with Disabilities Education Act, which provided: "Secondary school. The term 'secondary school' *means* a nonprofit institutional day or residential school, *including* a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12." (*Ariz. State Bd. for Charter Sch. v. U.S. Dep't of Educ.* (9th Cir. 2006) 464 F.3d 1003, 1006 [emphasis added].) Unlike "includes," the word "means" is generally a term of limitation; thus, the statutory term "secondary school" was being limited to a "nonprofit institutional day or residential school." (See *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 309.)

The Sierra Club's reliance on *Arizona State Board for Charter School* is misplaced for at least two reasons. First, it is well established that

"federal decisional authority is neither binding nor controlling in matters involving state law." (*Nagel v. Twin Laboratories, Inc.* (2003) 109 Cal.App.4th 39, 55.) As noted above, there is no shortage of California cases interpreting statutory definitions similar to Section 6254.9. Second, the federal case relied upon by the Sierra Club interpreted a federal statute that does not resemble Section 6254.9 in the way it is structured or phrased.

The Sierra Club's statutory arguments ignore the plain language of Section 6254.9 and contradict well-established California case law interpreting similar statutory definitions. "Computer software" is the term expressly defined in Section 6254.9, subdivision (b). As used in the statute, "computer software," expressly includes computer mapping systems. (§ 6254.9(b).)

2. The Sierra Club's proposed interpretation of Section 6254.9 renders subdivision (b) superfluous and without meaning

It is a fundamental rule that "'[c]ourts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage.'" (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1155, quoting *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22; *Copley Press, Inc. v. Superior Court, supra,* 39 Cal.4th at p. 1284 ["In interpreting that language, we strive to give effect and significance to every word and phrase."], citing *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.) Courts must "not presume that the Legislature performs idle acts, nor [can they] construe statutory provisions so as to render them superfluous." (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22.) "[E]ffect should be given, whenever possible, to the statute as a whole and to every word and clause thereof, leaving no part or provision useless or deprived of meaning."

(*Weber v. Santa Barbara County* (1940) 15 Cal.2d 82, 86.)

Here, Section 6254.9, subdivision (b), defines "'computer software'": "As used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems." The plain language of this subdivision makes clear that it does not statutorily define "computer mapping systems" to mean "software." Instead, "computer software" is the term being defined to include computer mapping systems. Therefore, computer mapping systems do not constitute public records under the PRA.

The Sierra Club's cites external dictionary definitions of "computer software" that are different than subdivision (b). (OB, pp. 13-17.) The Sierra Club's replacement of subdivision (b) with external definitions of "software" violates the mandate that a court construing a statute may only "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858.) If computer mapping system is just another term for "computer software," and "computer software" as used in Section 6254.9 is defined in reference to the external dictionary definitions provided by the Sierra Club, then subdivision (b) and the term "computer mapping system" become surplusage and are deprived of meaning or operative effect.

The Sierra Club attempts to overcome the surplusage problem inherent in its construction of subdivision (b) by declaring that the rule against surplusage is "inapplicable" because there is some overlap between "computer mapping systems," "computer programs," and "computer graphics systems," thus all three terms result in some surplusage. (OB, pp.

[emphasis added].) This principle is now enshrined in the state Constitution as the result of an initiative adopted by the voters in 2004: "The people have the right of access to *information* concerning the conduct of the people's business, and therefore ... the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, § 3, subd. (b)(1) [emphasis added].)

The computer mapping system exception is consistent with the policy of public disclosure set forth above. Section 6254.9, subdivision (a), states that computer software, which is defined for the purposes of the statute to include computer mapping systems, is not a public record. However, subdivision (d) provides that "[n]othing in this section is intended to affect the public record status of *information* merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter." (Emphasis added.) Thus, Section 6254.9 creates an exemption for GIS file formatted data, which might otherwise fall within Section 6252, subdivision (e)'s broad definition of public records that are subject to the PRA, but it nevertheless guarantees the public access to non-GIS formatted records containing the same *information* stored in a GIS.

This Court has recognized other instances in which the Legislature exempted a record from production, but allowed or compelled disclosure of the information contained therein. In *Williams v. Superior Court* (1993) 5 Cal.4th 337, this Court considered the exemption for complaints to law enforcement agencies contained in Section 6254, subdivision (f), which also required the disclosure of certain information contained therein:

> [T]he Legislature took a different approach than Congress. Instead of adopting criteria that would require the exemption's applicability to be determined on a case-by-case basis, the Legislature, as already mentioned, adopted a series

> of amendments that *required the disclosure of information derived from the records while, in most cases, preserving the exemption for the records themselves.*

(*Id.* at p. 353 [emphasis added]; see also *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1072 ["This section specifies the information – not the records – that must be provided, such as the 'substance' of complaints and the 'factual circumstances surrounding the crime or incident.'"].) Thus, this Court noted that the "Legislature's effort to provide access to selected information from law enforcement investigatory records would have been a wasted one if, as [the requesting party] proposes, the recordings themselves were subject to disclosure." (*Haynie v. Superior Court*, *supra*, 26 Cal.4th at p. 1072.)

Here, similar to the arguments rejected in *Williams* and *Haynie,* the Sierra Club builds a straw man by arguing that if Section 6254.9's exemption for computer mapping systems limits disclosure of the OC Landbase in a GIS file format, then subdivision (d), would be rendered superfluous. (OB, p. 27, 31.) However, this argument is undercut by the trial court's express finding that the County agreed to produce non-GIS file formatted records, including electronic records in Adobe PDF format, which contained the information stored in the OC Landbase. (5 PA 1349-1350.)

Indeed, the Sierra Club's own arguments illustrate the legal effect of subdivision (d). The Sierra Club creates a straw man by arguing that "depending on how one reads §6254.9, either the GIS data requested by Sierra Club is excluded from public record status or it is not. *If excluded, none of the information need be provided at all, electronically or otherwise.*" (OB, p. 31 [emphasis added].) The Sierra Club concedes that the County agreed to produce non-GIS formatted records such as printed

tract maps or computer records in an electronic Adobe PDF format, which contain the same information stored in the OC Landbase, which is in a GIS file format that is readable by a computer mapping system. (OB, p. 29.) Yet, the Sierra Club's argues that if the OC Landbase is exempt under Section 6254.9, then the statute must also exempt non-GIS formatted records containing the same information. (OB, p. 31.) Subdivision (d) knocks down the Sierra Club's straw man. Subdivision (d) makes clear that Section 6254.9 does not "affect the public record status of *information* merely because it is stored in a computer," and "[p]ublic records stored in a computer shall be disclosed as required by this chapter." Thus, contrary to the Sierra Club's argument, non-GIS formatted records must still be produced under the PRA even though the same information contained therein is also stored in a computer mapping system in a GIS file format.

The trial court's factual findings and the Sierra Club's own arguments amply demonstrate that subdivision (d) is not rendered superfluous through the recognition of Section 6254.9's exemption for computer mapping systems. Even though the OC Landbase in a GIS file format is exempt from disclosure, the County is required to, and is fully prepared to, produce the information stored therein in alternative non-GIS file formats.

B. The Trial Court's Factual Finding That The OC Landbase Is Part of A Computer Mapping System Compels The Conclusion That The OC Landbase is Exempt Under Section 6254.9

1. The Sierra Club fails to demonstrate that the trial court's factual findings are unsupported by substantial evidence

A reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact. (*Foreman & Clark*

Corp. v. Fallon (1971) 3 Cal.3d 875, 881.) If an appellant chooses to rebut this presumption, the appellant must "demonstrate that there is *no* substantial evidence to support the challenged findings." (*Ibid.*, emphasis in original, internal quotation marks omitted.) "A recitation of only defendants' evidence is not the 'demonstration' contemplated under the above rule." (*Ibid.*) If appealing parties contend that "some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed to be waived." (*Ibid.*, emphasis in original, internal quotation marks omitted.)

Here, after multiple hearings, hundreds of pages of briefs, declarations, and exhibits, extensive discovery, and a two-day evidentiary hearing in which the trial court considered testimony from three GIS experts, the trial court found that "[t]he term "computer mapping system" is an early term for GIS." (5 PA 1349.) The trial court also found that "'GIS' is an acronym for 'geographic information system,'" and that "[t]he County offered persuasive testimony and evidence that the term 'GIS' refers to 'an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes.'"[4] (*Ibid.*) The trial court "credit[ed] the County's evidence and the testimony of witnesses that the OC Landbase in a GIS file format is part of a computer mapping system."

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[4] Although the Sierra Club ignores these findings regarding the nature of a computer mapping system, the Sierra Club reinforces them when it asserts that "[i]f provided with a copy of the OC Landbase in GIS file format, the Sierra Club, using its own GIS software, could display, analyze and query the data in many ways, some of which would be useful in monitoring the county government's activities." (OB, p. 52.)

(5 PA 1353.)

The Sierra Club indirectly attacks these factual findings by ignoring them and providing a one-sided recital of the underlying facts regarding the nature of a GIS and the OC Landbase.[5] (OB, pp. 8-10.) The Sierra Club now describes a GIS as "a framework for gathering and organizing spatial data and related information so that it can be displayed and analyzed," which could just as easily describe a printed Thomas Guide map as well as a computer mapping system. (OB, p. 8.) However, in providing this substitute description of a GIS, the Sierra Club fails to meet its burden of demonstrating that the trial court's findings on this issue are unsupported by substantial evidence.

The County and the Sierra Club's experts testified that a "geographic information system" or "GIS" refers to an integrated collection of both

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[5] The Sierra Club's statement of facts relies on a "GIS Needs Assessment Study," which the Sierra Club was unable to introduce into evidence in the trial court. (OB, p. 9; RT 98-100.) The Court of Appeal also denied the Sierra Club's request to judicially notice this same document. (Slip Op., p. 4, fn. 3.) The Sierra Club once again attempts to judicially notice portions of this document in this Court based on its contention that "the Assessment contains facts and propositions with respect to government's use of GIS technology that are not reasonably subject to dispute ..." (Petitioner's Request for Judicial Notice ("Pet.RJN"), pp. 10-11.)

However, as explained in the County's Opposition to the Sierra Club's Request for Judicial Notice before this Court, the GIS Needs Assessment Study also describes a GIS as "an organized collection of computer hardware, software, geographic data and personnel designed to efficiently capture, store, update, manipulate, analyze, and display all forms of geographically referenced information." (County Opposition to Request for Judicial Notice, Ex. A.) The Sierra Club's arguments before this Court are based on the premise that such a system only consists of software. (OB, pp. 19-28.) Thus, the Sierra Club itself is disputing the facts and propositions contained within the document for which it is seeking judicial notice.

software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes. (RT 109-112, 133-134, 193-198; 4 PA 789-791; 5 PA 1306-1307, 1317, 1349; 1 RPA 75-76; 2 RPA 119-121.) "Computer mapping system" is another term used for "geographic information systems." (RT 104, 107-108, 118-119, 198-200; 3 PA 527-529, 532; 4 PA 789-791; 5 PA 1349; 2 RPA 119-121.) The OC Landbase data, which is in a GIS file format, is part of a computer mapping system.[6] (RT 200; 4 PA 789-791; 5 PA 1083, 1348-1349; 2 RPA 119-121.)

The Sierra Club's factual claims to the contrary were not credible. (OB, pp. 8-10.) Early in the evidentiary hearing, the Sierra Club introduced the testimony of their expert, Bruce Joffe, who *initially* testified that a geographical information system only consisted of software and disagreed with the description of geographical information system offered by the County, which included both software and data. (RT 60, 65-66.) On cross-examination, however, Mr. Joffe admitted that the model data distribution policy, which he developed, defined geographical information systems as "the collection of computers, software, databases, and data that enable geospatial data to be received, manipulated, and distributed."[7] (RT 110-

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[6] The County's expert, Robert Jelinek, has worked with the OC Landbase since the 1980s, participated in the development of the OC Landbase in its current form, and has seventeen years of experience working with geographic information systems. (RT 163-166, 189, 191-193.)

[7] Mr. Joffe first testified on cross-examination that the model data distribution policy represented his opinions on GIS and that it was important for the policy to contain accurate definitions of the technical terms contained therein. (RT 111.) However, on redirect, Mr. Joffe testified that the model policy not only contained his views, but the views of numerous GIS professionals who participated in the development of the policy, and on re-cross he further testified that that the model policy

112; 5 PA 1317; 1 RPA 76.) Likewise, after admitting that GIS and computer mapping systems were related technologies in his sworn declaration, Mr. Joffe claimed at the evidentiary hearing that he "apparently misspoke." (RT 107-108; 3 PA 527.)

An appellate court may not reweigh the evidence and is bound by the trial court's credibility determinations. (*Manson v. Shepherd* (2010) 188 Cal.App.4th 1244, 1264.) The contradictions in the testimony offered by the Sierra Club's witnesses on the nature of geographic information systems demonstrates that it was reasonable for the trial court to find the County's witness more credible. The Court should disregard the Sierra Club's description of a GIS or a computer mapping system, because the Sierra Club fails to demonstrate that there is no substantial evidence to support the trial court's finding that "[t]he OC Landbase data, which is in a GIS file format, constitutes a part of a computer mapping system." (5 PA 1349.)

2. The trial court's ruling was based on factual evidence that the OC Landbase is part of a computer mapping system

Section 6254.9, subdivision (a), provides that "computer software" developed by a state or local agency is not a public record. (§ 6254.9(a).) Subdivision (b) defines "computer software" as used in the statute to include computer mapping systems. (§ 6254.9(b).)

Here, as discussed above, the trial court factually found that "[t]he OC Landbase data, which is in a GIS file format, constitutes a part of a computer mapping system." (5 PA 1349.) Thus, applying the plain

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represented "a consensus view" and that the model policy was "a consensus document." (RT 129-130, 133-134.)

language of the statute, the trial court concluded that "the OC Landbase in GIS file format is not a public record, but falls within Section 6254.9's exception to the PRA's general rules of disclosure." (*Ibid.*)

The trial court's factual findings regarding the nature of a computer mapping system are also consistent with plain language definition of the word "system," which was contemporaneous with the adoption of Section 6254.9 in 1988. "System" was typically defined as "a group of interacting, integrated, or interdependent elements forming a complex whole."[8] (American Heritage Dict. (2d college ed. 1982) p. 1234.) "System," therefore, does not mean software. Thus, the plain language definition of "system" is consistent with the trial court's finding that a computer mapping system is an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes. (5 PA 1349.)

As noted above, the Sierra Club attempts to sidestep the trial court's factual findings by arguing that subdivision (b) actually operates to define the term "computer mapping system," as used in Section 6254.9, to mean "software" as defined in the dictionaries the Sierra Club provides. (OB, pp. 13-32.) Thus, under the Sierra Club's theory, the testimony and evidence that the OC Landbase is part of a computer mapping system is irrelevant, because for the purposes of Section 6254.9, "computer mapping system" is defined to mean "software" as defined in a dictionary.

The trial court's factual findings, which were based in large part on evidence introduced by the Sierra Club itself, illustrate the attenuated nature

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[8] Likewise, Webster's Ninth New Collegiate Dictionary, which was also published at the time Section 6254.9 was adopted, defines "system" as "a regularly interacting or interdependent group of items forming a unified whole." (Webster's 9th New Collegiate Dict. (1987) p. 1199.)

of the Sierra Club's arguments. Not only is the Sierra Club asking this Court to abandon well-established rules of statutory interpretation, but the Sierra Club is asking the Court to disregard the substantial evidence in the record that the OC Landbase is a part of a computer mapping system.

3. The Sierra Club's reliance on the functions of a computer mapping system demonstrates why such systems are an integrated collection of computer software and data

The Sierra Club does not identify any specific information that the County withheld that would controvert the trial court's factual finding that the County agreed to produce non-GIS formatted records to the Sierra Club that contained the information stored in the OC Landbase at the cost of reproduction. (5 PA 1350.) Indeed, the County agreed to produce these responsive records in electronic non-GIS formats like "Adobe PDF." (5 PA 1084, 1349.)

Nonetheless, while insisting that it is only asking for information, the Sierra Club repeatedly relies on the functionality of a GIS to justify the disclosure of the OC Landbase in a GIS file format. (OB, p. 53.) The Sierra Club asserts that, "[i]f provided with a copy of the OC Landbase in GIS file format, the Sierra Club, using its own GIS software, could display, analyze and query the data in many ways, some of which would be useful in monitoring the county government's activities." (OB, p. 52.) The Sierra Club contends that data in a GIS file format enables "sophisticated computerized analysis of an almost limitless number of matters relating to real property." (OB, p. 53.) "Conversely, when the records are provided only in paper or PDF form, as Orange County has offered, the same analysis is impossible." (*Ibid.*) The Sierra Club factually claimed in the trial court that non-GIS file formatted records "do not contain all of the data

that was contained in the [OC Landbase in a GIS file format]," because the non-GIS file formatted records are "static" while GIS file formatted records "can be altered and updated" and be used "to conduct a wide range of analysis." (3 PA 537.) Indeed, at the evidentiary hearing in this case, the Sierra Club's experts went so far as to contend that, "a GIS parcel database is fundamentally different from the same data provided on paper or electronically in Non-GIS format because the parcel database can be analyzed, displayed and manipulated as a whole by GIS software in ways that are virtually impossible with data in a non-GIS format." (RT 118.)

The Sierra Club's functionality based arguments illustrate why the trial court found based on the evidence, including the Sierra Club's own experts, that computer mapping systems or geographic information systems are an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes. (RT 109-112, 133-134, 193-198; 4 PA 789-791; 5 PA 1306-1307, 1317, 1349.) Even while insisting that they are not seeking the production of software as defined in a dictionary, the Sierra Club cannot help but repeatedly reference the functionality of GIS software to justify the production of GIS data in a GIS file format. The Sierra Club's arguments confirm that GIS data and GIS software are part of a group of interacting, integrated, or interdependent elements forming a complex whole or, in other words, are part of a "system" or even more specifically, a computer mapping system. (American Heritage Dict. (2d college ed. 1982) p. 1234.)

In addition, the Sierra Club's functionality arguments conflict with its legislative history arguments, which are based in part on former Government Code section 6256. (OB, pp. 36, 46-47.) This former statute

provided in relevant part, "[a]ny person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency." (Former Gov. Code, § 6256 repealed by Stats. 1998, ch. 620, § 7, eff. Jan. 1, 1999.) Under former Section 6256, data in a computer had to be produced albeit in a "form determined by the agency." Yet, the Sierra Club claimed in this case that the County did not provide it with responsive information because data in a GIS file format is "fundamentally different" than the same data in a non-GIS file format based on the functionality of a GIS. (RT 117; 3 PA 537.) If the Sierra Club's allegation that data in a GIS file format is "fundamentally different" than non-GIS file formatted data was credited, then the failure to provide data in a GIS file format would arguably violate former Section 6256. The Sierra Club itself notes that the City of San Jose received a number of requests for the geographic information stored on its computer mapping system pursuant to the PRA notwithstanding former Government Code section 6256. (OB, p. 32; Pet.RJN., Ex. 4, p. PA 986.)

The Sierra Club's arguments that data in a GIS file format is fundamentally different than non-GIS formatted data because the latter does not allow users to exploit the functionality of GIS software is consistent with the trial court's finding that geographic information systems are an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes. (RT 117; 5 PA 1349.) Likewise, the Sierra Club's arguments based on the functionality of a computer mapping system that non-GIS formatted records are fundamentally different than GIS file formatted records underscores both the need and

rationale for Section 6254.9's computer mapping system exception.

III. SECTION 6254.9'S LEGISLATIVE HISTORY CONFIRMS THE STATUTE'S PLAIN MEANING

"Although the plain language of the statutes dictates the result here [], legislative history provides additional authority." (*Barratt American Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 697, internal cite omitted; see also *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046 ("[This Court] also look[s] to legislative history to confirm [this Court's] plain-meaning construction of statutory language."], citing *Troppman v. Valverde* (2007) 40 Cal.4th 1121, 1137.)

Here, Section 6254.9's legislative history confirms that it was designed to protect computer mapping systems from disclosure, including the data component of such systems, and to authorize public agencies to recoup the costs of developing and maintaining computer mapping systems by selling, leasing, or licensing the system. Moreover, the legislative history directly contradicts the Sierra Club's contention that Section 6254.9 does not statutorily define "computer software." (OB, pp. 13-17, 25.)

Section 6254.9 was enacted through the passage of Assembly Bill No. 3265 ("AB 3265").[9] (Chapter 447, Statutes of 1988.) The City of San Jose sponsored AB 3265 because it had just developed a computer mapping

[9] As introduced on February 11, 1988, AB 3265 proposed to amend Section 6257 by adding an exemption for "proprietary information," which was defined to include "computer readable databases, computer programs, and computer graphics systems." (Pet.RJN., Ex. 4, p. PA 41; AB 3265 (1987-1988 Reg. Sess.) as introduced Feb. 11, 1988.) Following the amendments discussed herein, AB 3265 was sent to the Governor on August 9, 1988 and signed on August 20, 1988. (Pet.RJN., Ex. 4, p. PA 950, 953.)

system known as the Automated Mapping System ("AMS").[10] (Pet.RJN., Ex. 4, p. PA 986; 4 PA 986.) The City of San Jose explained in a memorandum accompanying the proposed bill dated January 19, 1988:

> The City of San Jose, like many other government agencies has developed various computer readable data bases, *computer programs, computer graphics systems* and *other computer stored information at considerable research and development expense*. For example, the City's Department of Public Works has recently completed development of a database for a *computer mapping system* known as the Automated Mapping System (AMS).
>
> *The AMS is the product of eight years of efforts on the part of Public Works to collect and store on computer magnetic tape, city wide information* regarding the location of public improvements and natural features. This wide range of data can be arranged in various ways to produce many types of maps for specialized uses, such as fire response, sewer collection, or police beat maps. Public works estimates that development costs to date have exceeded $2 million dollars.
>
> Since AMS was developed, the City has received a number of requests from utility companies, engineering firms, map companies, and other commercial concerns, for copies of the system in computer readable form, *i.e.*, magnetic tape. These requests have often come in the form of a request under the Public Records Act.

(*Ibid.* [emphasis added].) Thus, the City of San Jose sought to protect "computer readable data bases, computer programs, computer graphics systems and other computer stored information," in specific reference to its

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[10] California courts have held that "[s]tatements by the sponsor of legislation may be instructive..., as are legislative committee reports on the proposed legislation." (*Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1373; see also *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 401 [statements of the sponsor of legislation are entitled to be considered in determining the import of the legislation].) This rule is particularly applicable where the statement is consistent with the statutory language and other legislative history. (*Dubins v. Regents of Univ. of Cal.* (1994) 25 Cal.App.4th 77, 87.) Thus, in *Delaney v. Baker* (1999) 20 Cal.4th 23, 32, the California Supreme Court specifically noted amici curiae's reference to the sponsor of the legislation at issue, the Beverly Hills Bar Association, which was quoted in a Senate committee analysis appearing shortly before the bill's enactment.

"development of a database for a computer mapping system known as the Automated Mapping System (AMS)." (*Ibid.*)

The Legislature repeatedly referred to this background and purpose throughout its consideration of the bill. On April 4, 1988, AB 3265 was amended to define exempt "computer software" to include "computer readable data bases, computer programs, and computer graphics systems." (Assem. Bill No. 3265 (1987-1988 Reg. Sess.) as amended April 4, 1988, § 1; Pet.RJN., Ex. 4, p. PA 944.) An Assembly committee analysis dated April 5, 1988 stated that "'computer software' *as defined*" is not a public record for the purposes of the California Public Records Act, but that information stored on computers retains its public record character." (Pet.RJN., Ex. 4, p. PA 955; Assem. Comm. On Gov. Org., Analysis of AB 3265 (1987-1988 Reg. Sess.) as proposed to be amended April 4, 1988 [emphasis added].) The analysis addressed the purpose of the bill in reference to San Jose's needs:

> The City of San Jose, the sponsor of the bill, has developed various computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes. A number of utility companies, engineering firms, private consultants and other commercial interests are requesting the city's software under the California Public Records Act. The city introduced the bill in order to:
>
> a) make it clear that the software is not itself a public record;
>
> b) allow the City to sell, lease, or license the software at a cost greater than the "direct costs of duplication", as specified by the Public Records Act (Government Code § 6257).
>
> The City is concerned about recouping the cost of developing software.

(*Ibid.*) The analysis further explained that "information is not shielded

from the California Public Records Act 'merely because it is stored on a computer.'" (*Ibid.*) The analysis noted that under then existing Section 6256, which has since been repealed, a public agency was still required to produce the information stored in a computer mapping system albeit "in a form determined by the agency." (*Ibid.*) Thus, by acknowledging that the purpose of the bill was to protect the City of San Jose's "computer readable mapping systems, graphics systems, and other computer programs," the Legislature recognized that Section 6254.9 only operated to exempt the disclosure of data in a GIS file format, while still requiring disclosure of the information in other non-GIS file formats.

On June 9, 1988, the bill was amended to, among other things; revise the definition of exempt "computer software" to include "computer mapping systems," rather than the broader term "computer readable data bases." (Assem. Bill No. 3265 (1987-1988 Reg. Sess.) as amended June 9, 1988; Pet.RJN., Ex. 4, p. PA 947.) On June 14, 1988, the Senate Committee on Governmental Organization observed:

> The City of San Jose, the sponsor of this bill, has developed various computer readable data bases and other computer stored information for various civic planning purposes. A number of private parties have requested use of the city's software under the Public Records Act for profit-making purposes. The sponsor argues that the proprietary information requested has been developed and maintained by the city at great expense.
>
> According to the author, the purpose of the bill is to clarify that computer software is not itself a public record and to authorize a public agency to sell, lease, or license the software at a cost greater than the direct costs of duplication, as specified by the Public Records Act. *The bill would permit the city of San Jose and other governmental agencies to recoup development costs of computer databases sold to the public.*

(Pet.RJN., Ex. 4, p. PA 981; Sen. Comm. On Gov. Org., Analysis of AB

3265 (1987-1988 Reg. Sess.) as amended June 9, 1988 [emphasis added].) The committee further described the bill as applying to "'computer software' *as defined*," which again undermines the Sierra Club's argument that the Legislature did not intend to statutorily define "computer software" as used in Section 6254.9 to include the data component of a computer mapping system. (*Ibid.* [emphasis added].) Even after the broader term "computer readable data bases" had been replaced by "computer mapping system," the Legislative committee reports continued to state that AB 3265 would protect the City of San Jose's database, which was a computer mapping system.

On June 15, 1988, AB 3265 (as amended) contained the current version of Section 6254.9, including the language that defines "computer software" to include computer mapping systems. (Assem. Bill No. 3265 (1987-1988 Reg. Sess.) as amended June 15, 1988; Pet.RJN., Ex. 4, p. PA 949.) The Department of Finance analyzed the final version of the bill on June 20, 1988 and noted that "[t]he bill specifically includes computer mapping systems as computer software thereby permitting their sale." (Pet.RJN., Ex. 4, PA 1017; Cal. Dept. Finance, Analysis of AB 3265 (1987-1988 Reg. Sess.) as amended June 15, 1988.) The Department observed that "the potential revenue generated by the sale of computer programs, graphics, and *information data bases* could be substantial depending on the price of the information, programs, or graphics, and conditions of the sales or licensing agreement." (*Ibid.* [emphasis added].)

On June 23, 1988, the Senate Rules committee stated with respect to the final version of AB 3265:

> The source [the City of San Jose] has developed various computer readable data bases and other computer stored information for various civic planning purposes. A number of private parties have requested use of the city's software

> under the Public Records Act for profit-making purposes. The sponsor argues that the proprietary information requested has been developed and maintained by the city at great public expense.
>
> According to the author's office, the purpose of this bill is to clarify that computer software is not itself a public record and to authorize a public agency to sell, lease, or license the software at a cost greater than the direct costs of duplication, as specified by the Public Records Act. The bill would permit the city of San Jose and other governmental agencies to recoup development costs of computer databases sold to the public.

(Pet.RJN., Ex. 4, PA 1013; Sen. Rules Committee, Analysis of Assem. Bill No. 3265 (1987-1988 Reg. Sess.) as amended June 15, 1988.)

On July 21, 1988, the Assembly Governmental Organization Committee, Republican Analysis, commented with respect to the final version of AB 3265:

> The Public Records Act allows public entities to charge for the cost of duplicating. This bill amends the act to allow agencies to recover development and maintenance costs of computer software by selling or licensing computer programs and databases that have been developed sometimes at considerable public expense. Passing such costs along to those who will use them for business-oriented purposes in the taxpayers' best interest.[11]

(Pet.RJN., Ex. 4, PA 979; Assem. Gov. Org. Com., Republican Analysis of Assem. Bill No. 3265 (1987–1988 Reg. Sess.) as amended June 15, 1988.)

Finally, on or about August 4, 1988, the Assembly's concurrence to the Senate's amendments to AB 3265 continued to refer to the situation and needs of the City of San Jose, the sponsor of the bill. (Pet.RJN., Ex. 4, PA 1028-1029, Assem. Conc. In Sen. Amend. to Assem. Bill No. 3265 (1987-1988 Reg. Sess.) as amended June 15, 1988.) The report notes that AB 3265 provides that "computer software" as defined is not a "public record"

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[11] See *Copley Press, Inc. v. Superior Court, supra,* 39 Cal.4th at p. 1297 [California Supreme Court cites Republican Analysis of bill as evidence of the legislative history of a statute].

for purposes of the PRA, but that information stored on computers retains its public character. (Pet.RJN., Ex. 4, PA 1028-1029, Assem. Conc. In Sen. Amend. to Assem. Bill No. 3265 (1987-1988 Reg. Sess.) as amended June 15, 1988.) The report also noted that the Senate amendments "specifically reference computer mapping systems and make other technical revisions." (*Ibid.*)

At the start of the legislative process, the City of San Jose sought to protect its Automated Mapping System, which was a type of computer mapping system. (Pet.RJN., Ex. 4, p. PA 986.) The City alternately described its computer mapping system as a computer readable database, computer program and computer graphic system. (*Ibid.*) This system was the product of an eight-year effort to collect and store city wide information regarding the location of public improvements and natural features at a cost in excess of $2 million dollars. (*Ibid.*) At the end of this legislative effort, Section 6254.9, subdivision (b), defined exempt "computer software" as follows: "[a]s used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems." Thus, the beginning and end of Section 6254.9's legislative history demonstrates a legislative intent to protect all components of a "computer mapping system," including the data component of such a system, rather than to artificially limit the protection of such a system to its software.

The Legislature also intended to authorize public agencies to recoup the costs of developing and maintaining such systems while also allowing public access to the information stored therein in alternative non-GIS file formats. Nothing in Section 6254.9's language or history suggests that the computer mapping system exemption can be avoided by asking for the piece-meal production of the data in such a system in a GIS file format.

Indeed, such a piece-meal production would directly conflict with the legislative intent of the exception as articulated above.

The Sierra Club argues that as a result of the Legislature's actions in narrowing the language of Section 6254.9 from "proprietary information," then "databases," and finally "computer mapping systems," the City of San Jose's effort to protect its computer mapping system ended in failure because it alleges that computer mapping systems are not a type of database. (OB, pp. 39-40.) However, the Sierra Club's own evidence in the trial court below undermines this eleventh hour allegation. (3 PA 527.) The Sierra Club filed the expert witness declaration of Bruce Joffe who declared that "computer mapping systems" operate by formatting "geographic data into a spatially-enabled database." (3 PA 527.) Indeed, Mr. Joffe specifically described the OC Landbase as a "geographic database." (3 PA 527.) Thus, the Sierra Club's own evidence at trial confirms that computer mapping systems like the OC Landbase are a specific type of database.

Likewise, the Sierra Club's argument that a computer mapping system is not a type of database is undercut by their incorporation into their Opening Brief of a portion of a 2005 California Attorney General opinion, which relies on Government Code section 51010.5. (OB, pp. 56-58.) That statute defines the term "GIS mapping system" as used in the Elder California Pipeline Safety Act of 1981 to mean "a geographical information system that will collect, store, retrieve, analyze, and display environmental geographical data in a data base that is accessible to the public."[12] (§

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[12] The 2005 AG Opinion ignores the plain language of Government Code section 51010.5, which states that "[a]s used in this chapter, the following definitions apply..." However, as discussed above, even if this

51010.5(i).) Section 51010.5 and related provisions confirm that the Legislature used the similarly sounding term "GIS Mapping System" to refer to a type of database. (§ 51017.1(b)(2) [specifies that § 51010.5 refers to "the GIS mapping system created by Section 25299.97 of the Health and Safety Code"]; Health & Saf. Code, § 25299.97(b) [State Water Resources Control Board shall expand database to create a cost-effective GIS mapping system]; Health & Saf. Code, § 25935.117(b) ["...to enable compatibility with existing databases of the board, including the GIS mapping system established pursuant to Section 25299.97"].) Indeed, the State is required under Health & Safety Code section 25935.117, subdivision (b), to "to enable compatibility with existing databases of the board, including the GIS mapping system established pursuant to Section 25299.97." Thus, the authority relied upon by the 2005 AG Opinion and incorporated into the Sierra Club's Opening Brief, confirms that Section 6254.9 was specifically tailored to protect computer mapping systems in their entirety, including the data stored therein in a GIS file format.

The legislative history of Section 6254.9 confirms that Section 6254.9 defines "computer software" to include computer mapping systems. The Legislature understood that this included the data stored therein a GIS file format, which allows such systems to read and process the data. The trial court in this case factually determined that Orange County's OC Landbase in a GIS file format is part of a computer mapping system. Thus, the OC Landbase is exempt from disclosure under Section 6254.9.

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express limitation is ignored, it is clear that this statute supports the County's position.

IV. THE SIERRA CLUB'S RELIANCE ON LEGISLATIVE ACQUIESCENCE IS MISPLACED

A. Over 17 Years Passed Between The Enactment of Section 6254.9 and the 2005 Attorney General Opinion

This Court has "often said that mere legislative inaction is a 'weak reed' upon which to rest any conclusion about the Legislature's intent. (*Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 243.) The Court explained:

> We have sometimes found legislative acquiescence in the construction of a statute where, over a long period of uniform judicial or administrative treatment, the Legislature has addressed the law in question on multiple occasions, yet has not disturbed the settled interpretation. [internal cites omitted] On the other hand, we have declined to base such a conclusion on a bill's mere failure, as here, to clear committee in the legislative chamber where it was introduced. [internal cites omitted] As we have noted, "failure of the bill to reach the [chamber] floor is [not] determinative of the intent of the [chamber] as a whole that the proposed legislation should fail."
>
> ...
>
> Many reasons could explain the Legislature's failure to consider the bills further, including the press of other business, political considerations, or a tendency, at least in the short run, to trust the courts to correct their own errors. [internal cites omitted] The Legislature's mere inaction on two hastily presented bills cannot foreclose this court from examining, in the normal course, the Ralphs Grocery decision and the issues it addressed. Plaintiff's claim of legislative acquiescence must be rejected.

(*Prachasaisoradej v. Ralphs Grocery Co., Inc., supra*, 42 Cal.4th at pp. 243-244; see also *Olson v. Automobile Club of Southern Cal.* (2008) 42 Cal.4th 1142, 1156 [no legislative acquiescence unless there exists both a well-developed body of law interpreting a statutory provision and numerous amendments to a statute without altering the interpreted provision].)

Here, the Sierra Club argues based on the doctrine of legislative acquiescence that the Legislature's failure to amend Section 6254.9 in

response to the 2005 AG Opinion demonstrates that Legislature acquiesced in the interpretation of Section 6254.9, subdivision (b), contained therein. (OB, p. 49.) However, the 2005 AG Opinion is not a binding published appellate decision. Also, the mere passage of four years from the issuance of the 2005 AG Opinion to the initiation of the present lawsuit in 2009 hardly constitutes a long period of uniform judicial or administrative treatment of Section 6254.9's computer mapping system exemption.

In contrast, over seventeen years passed between the adoption of Section 6254.9 in 1988 and the issuance of 2005 AG Opinion. The Sierra Club itself claimed that prior to the 2005 AG Opinion, at least 19 counties charged fees for the production of GIS data in a GIS file format. (3 PA 533-534.) The Legislature itself observed in 1997 that "[p]ublic agency policies for pricing the [GIS] data range from covering the cost of data duplication, to recouping the costs from compilation and maintenance of the data bases." (County RJN, Ex. 1, Assem. Bill. No. 1293, *supra*, § 1, subd. (m).) Thus, to the extent that legislative acquiescence is applicable in this case, it would more strongly support the conclusion that the Legislature acquiesced in the construction of Section 6254.9's exemption for computer mapping systems by at least 19 counties prior to the 2005 AG Opinion for a period of over seventeen years.

B. The Legislature's Passage of AB 1293 In 1997 Assumed That Data In A GIS File Format Is Exempt From Disclosure

The Sierra Club cites the introduction of AB 1978 in 2008, which would have amended Section 6254.9. (OB, pp.49-50.) However, as noted in *Prachasaisoradej v. Ralphs Grocery Co., Inc.*, *supra*, 42 Cal.4th at p. 243, the failure of a bill to reach the chamber floor is not determinative of

the intent of the chamber as a whole that the proposed legislation should fail. In contrast, as noted by the Court of Appeal below, the Legislature adopted AB 1293 in 1997, which is less than ten years after the adoption of Section 6254.9, and the bill would have become law if it had not been vetoed. (Slip. Op., p. 19; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 [bill passed by Legislature but vetoed by Governor was cognizable and relevant history]; County RJN, Ex. 1, Assem. Bill No. 1293 (1997-1998 Reg. Sess.).)

AB 1293 would have established state funding through grants "for the development of new, and maintenance of, framework data bases for geographic information systems." (County RJN, Ex. 1, Legis. Counsel's Dig. Assem. Bill No. 1293, *supra*, p. 2) The Legislature recognized "the high cost of creating and maintaining geographic information data bases," and observed that "[p]ublic agency policies for pricing the data range from covering the cost of data duplication, to recouping the costs from compilation and maintenance of the data bases." (County RJN, Ex. 1, Assem. Bill. No. 1293, *supra*, § 1, subd. (m).) The Legislature expressly intended "to provide an alternative source of funds for public agencies to create and maintain geographic information data bases without having to sell the public data." (County RJN, Ex. 1, Assem. Bill No. 1293, *supra*, § 1, subd. (n).) Significantly, the proposed legislation defined "'Geographic information system' as 'an organized collection of computer hardware, software, geographic information, and personnel designed to efficiently capture, store, update, manipulate, analyze, and display all forms of geographically referenced information.'" (Slip. Op., pp. 19-20; County RJN, Ex. 1, Assem. Bill No. 1293, § 2 (1997-1998 Reg. Sess.); Proposed Gov.Code, § 8302, subd. (f).) The proposed legislation would have

required "any recipient of a grant [to] make data developed or maintained with grant funds available to disclosure under the [Act] and require that the electronic data . . . be placed in the public domain free of any restriction on use or copy." (Slip. Op., pp. 19-20; County RJN, Ex. 1, Assem. Bill No. 1293, *supra*, § 2; Proposed Gov. Code, § 8306, subd. (a)(7).) This statutory *quid pro quo* would have been unnecessary if the Legislature believed that public agencies were already required to produce data in a GIS file format in response to a PRA request.

Under the analytical approach advocated by the Sierra Club, the actions of the Legislature in adopting AB 1293 speak far louder in supporting the County's position, than the Sierra Club's reliance on legislative silence and bills that never emerged out of committee. (OB, pp. 48-50.)

V. SECTION 6253.9 DOES NOT REQUIRE DISCLOSURE OF RECORDS THAT ARE EXEMPT UNDER SECTION 6254.9

Section 6253.9, subdivision (a), expressly states that it only applies to "information that constitutes an identifiable public record *not exempt from disclosure* pursuant to this chapter." (§ 6253.9(a).) Section 6253.9, subdivision (g), further provides that "[n]othing in this section shall be construed to permit public access to records held by any agency to which access is otherwise prohibited by statute."

Here, the Sierra Club states with respect to the above referenced provisions of Section 6253.9 that "ultimately, depending on how one reads § 6254.9, either the GIS data requested by Sierra Club is excluded from public record status or it is not." (OB, p. 31.) The County agrees. The OC Landbase in GIS file format is either exempt under Section 6254.9 or it is

not. Thus, under the Sierra Club's own proposed analytical framework, Section 6253.9 is irrelevant to the interpretation of Section 6254.9's computer mapping system exemption, because Section 6253.9 does not require access to exempt records. (§ 6253.9(a), (g).)

VI. PROPOSITION 59 DOES NOT ABROGATE EXISTING DISCLOSURE EXEMPTIONS; RATHER, IT CODIFIED EXISTING LAW THAT EXEMPTIONS MUST BE NARROWLY CONSTRUED

A. Proposition 59 Expressly Preserves Existing Exemptions

Proposition 59 states that a "statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the peoples right of access, and narrowly construed if it limits the right of access." (Cal. Const., art I, § 3(b)(2).) However, Proposition 59 does not abrogate any existing exceptions to disclosure:

> This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(Cal. Const., art I, § 3(b)(5).) Thus, the plain language of Proposition 59 makes clear that it does not alter any preexisting constitutional or statutory exceptions to access. (Cal. Const., art I, § 3(b)(5).)

Instead, Proposition 59 operates to constitutionally adopt the pre-existing rule that exceptions to disclosure must be narrowly construed. (See *Sutter's Place Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370, 1382 ["Proposition 59 is simply a constitutionalization of the CPRA."]; see also, e.g., *Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1351 [exemptions under the PRA are to be narrowly construed]; *California State*

University v. Superior Court (2001) 90 Cal.App.4th 810, 831; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1425; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476.)

This Court should reject the Sierra Club's argument that Proposition 59 somehow requires this Court to reverse the Court of Appeal's decision below. (OB, pp. 59-64.) The plain language of Proposition 59 makes clear that it "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records ... that is in effect on the effective date of this subdivision ..." (Cal. Const., art I, § 3(b)(5).) Section 6254.9 was in effect and unchanged for over decade prior to the adoption of Proposition 59. (Chapter 447, Statutes of 1988.) Thus, Section 6254.9 remains good law following Proposition 59's adoption.

B. Proposition 59 Does Not Alter Well-Established Rules Of Statutory Interpretation

It is well-established that "[a] mandate to construe a statute liberally in light of its underlying remedial purpose does not mean that courts can impose on the statute a construction not reasonably supported by the statutory language." (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 645; see also *Southern Cal. Gas Co. v. South Coast Air Quality Management Dist.* (2011) 200 Cal.App.4th 251, 268 ["Nor can we, in construing a remedial statute liberally, apply it in a manner not reasonably supported by its statutory language."].)

Here, it is unclear what the Sierra Club is proposing when it argues "[t]hat the right of access to government information is now a civil right in California suggests a greater significance should be given to it when construing statutes related to information access such as the PRA, and that

the judiciary should apply the constitutional requirement to interpret such statutes at the inception of the statutory interpretation exercise." (OB, p. 61.) However, to the extent the Sierra Club is suggesting that this Court should abandon long-established rules of statutory construction, this Court should decline this invitation. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527 ["Under settled canons of statutory construction, in construing a statute we ascertain the Legislature's intent in order to effectuate the law's purpose."].)

Nothing in the language of Proposition 59 requires a departure from well-established rules of statutory construction. (See Cal. Const., art I, § 3(b).) Indeed, construing Proposition 59 to require the application of a new interpretive jurisprudence would conflict with Proposition 59's mandate that it "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records ... that is in effect on the effective date of this subdivision ..." (Cal. Const., art I, § 3(b)(5).)

Accepting the Sierra Club's suggestion that different rules of statutory construction now apply in PRA cases by virtue of Proposition 59 invites great uncertainty. The fundamental rule of statutory construction that courts must ascertain the intent of the Legislature so as to effectuate the purpose of the law remains unchanged following the adoption of Proposition 59. (See *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 ["A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law."].)

VII. THE SIERRA CLUB'S RELIANCE ON THE COURT OF APPEAL DECISION IN *SANTA CLARA* AND A CALIFORNIA ATTORNEY GENERAL OPINION IS MISPLACED

A. The Court of Appeal Correctly Declined To Follow The California Attorney General Opinion Relied Upon By The Sierra Club

The Sierra Club relies on a 2005 Attorney General Opinion (AG Opinion) that was prepared long after Section 6254.9's adoption in 1988. (OB, pp. 56-58.) Although the opinions of the Attorney General are entitled to considerable weight, they are not binding upon the judiciary. (*City of Long Beach v. Dept. of Industrial Relations* (2004) 34 Cal.4th 942, 952 [court declined to adopt analysis contained in Attorney General's opinion].) None of the cases or dictionary references cited in the AG Opinion specifically interpreted Section 6254.9. Thus, this Court should decline to adopt the reasoning of the 2005 AG Opinion because its analysis of Section 6254.9 violates the basic goal of statutory interpretation, which is to ascertain the intent of the Legislature.

First, the AG Opinion ignores the plain language of Section 6254.9, which defines "computer software" "*[a]s used in this section*" to include "computer mapping systems." (Emphasis added.) Instead, as the Sierra Club does in this case, the AG Opinion relied on external definitions of "computer software" that do not purport to define this term as used in Section 6254.9. (See 88 Ops.Cal.Atty.Gen. 153 at p. 14.) In so doing, the AG Opinion created an artificial distinction between a computer mapping system's "data" and "software" that is not contained in the statute, thus "violating the rule that courts should not add to or alter [the words of a statute] to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*Estate of Kramme* (1978) 20 Cal.3d 567, 572.)

Second, as discussed above, the AG Opinion renders the term "computer mapping system" entirely superfluous. The AG Opinion states that computer mapping system "denotes unique computer programs to process such data using mapping functions -- original programs that have been designed and produced by a public agency." (88 Ops.Cal.Atty.Gen. 153 at p. 14.) However, Section 6254.9, subdivision (b), already contains a separate reference to "computer programs." If "computer mapping systems" are merely a type of "computer program," then the term "computer mapping system" becomes entirely superfluous.

Third, as discussed *supra* at page 36, the portion of the AG Opinion quoted by the Sierra Club relies on Government Code section 51010.5. However, instead of drawing a distinction between the data and software in a GIS mapping system, as asserted by the Sierra Club, Section 51010.5 and related statutes confirm that a GIS mapping system is a type of database, which includes the data stored therein. This statutory treatment of the term "GIS mapping system" directly contradicts the Sierra Club's arguments that a computer mapping system is not a specific type of database. (OB, pp. 39-40.)

B. The Court of Appeal in *Santa Clara* Expressly Declined To Rule On The Computer Mapping System Exemption

"[C]ases are not authority for propositions not considered." (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127.) The Sierra Club cites the decision in *County of Santa Clara v. Superior Court (CFAC)*, which concerned whether the designation of Santa Clara's GIS basemap as protected critical infrastructure information (PCII) pursuant to the Critical Infrastructure Information Act of 2002 (CII Act) precluded the disclosure of basemap. (*County of Santa Clara v. Superior Court* (2009)

170 Cal.App.4th 1301.) Santa Clara further argued that withholding the GIS Basemap was necessary to help prevent a terrorist attack. (*Id.* at p. 1328.)

An *amici curiae* in the *Santa Clara* decision attempted to address Section 6254.9's computer mapping system exemption. (*Id.* at p. 1312, fn. 4 and p. 1322, fn. 7; 2 PA 416-444.) However, the court of appeal expressly declined to consider the exemption at issue in this case:

> In this court, by contrast, the County's *amici curiae* urge an additional exemption, based on section 6254.9, which [Santa Clara] County argued unsuccessfully below. Under that section, computer software—defined to include *computer mapping systems*—is not treated as a public record. (§ 6254.9, subds. (a), (b).)
>
> Since the point is raised only by *amici curiae*, we need not and do not consider it. "Amici curiae must take the case as they find it. Interjecting new issues at this point is inappropriate." [cites omitted] We therefore decline to address the exemption issue raised solely by the County's *amici curiae* here.

(*Id.* at p. 1322, fn. 7 [emphasis added].) Unlike Santa Clara County, Real Party's arguments in the instant case are not based on national security or the CII Act, but on the computer mapping system exemption.

The Sierra Club's expert in this case, Bruce Joffe, was also the petitioner's primary expert in the *Santa Clara* case. (RT 116-118; *County of Santa Clara v. Superior Court, supra,* 170 Cal.App.4th at p. 1328.) However, Mr. Joffe offered dramatically different testimony in these two cases. In the *Santa Clara* case, Mr. Joffe testified that the disclosure of Santa Clara's GIS basemap would not pose a security threat because the same information stored therein was already readily available to the public through other sources. (Compare RT 116-118 with *County of Santa Clara v. Superior Court, supra,* 170 Cal.App.4th at p. 1328.)

In this case, Mr. Joffe asserted that the information stored in a GIS file formatted record is "fundamentally different" than the same information in a non-GIS file format, because only GIS file formatted data can be analyzed, displayed and manipulated with GIS software. (RT 118.) Indeed, the Sierra Club's own counsel objected to the County's questions to Mr. Joffe regarding his testimony in the *Santa Clara* case claiming that such evidence was irrelevant to the present matter. (RT 117.)

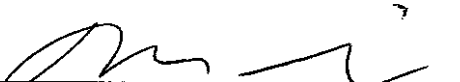
The testimony of the Sierra Club's own expert demonstrates that the evidence and issues considered in the *Santa Clara* case were dramatically different from those considered by the courts below in this case. This Court should find that the *Santa Clara* case is irrelevant to the issue of whether the computer mapping system exemption found in Section 6254.9 protects the OC Landbase from disclosure.

CONCLUSION

For these reasons, the County respectfully requests that this Court affirm the decision of the Court of Appeal.

Dated: December 14, 2011

NICHOLAS S. CHRISOS,
COUNTY COUNSEL
MARK D. SERVINO, DEPUTY
REBECCA S. LEEDS, DEPUTY

By: 
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CERTIFICATE OF WORD COUNT

I certify that this brief contains 13,967 words, not including tables or this certificate, according to the word count function of the word-processing program used to produce the brief. Therefore, the number of words in the brief complies with the requirements of California Rules of Court Rule 8.204(c)(1).

By: 

Mark D. Servino

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On December 14, 2011 I served the foregoing

ANSWER BRIEF ON THE MERITS

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Eileen Blanton

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Sierra Club v. S.C. (County Of Orange)
CA Supreme Court Case No. S194708
Court of Appeal, 4th Appellate District, Div. 3, Case No. G044138
Orange County Superior Court Case No. 30-2009-00121878

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