Defending Public Access to our Governments’ GeoData

The Supreme Decision

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What Basic Resource Is Needed To Start A Geoanalysis Project?

GIS Consultants, Piedmont, CA
Geographic Parcel Data in California's 58 Counties

- 49 Provide Parcel Data at No Cost or Cost of Reproduction ($5 to $300)
  - 20 Revised their distribution policy since 2004
- 8 Sell Parcel Data for More Than the Cost of Reproduction (over $500)
  - 5 Use private data provider for their basemap
- 1 Is Not Releasing Parcel Data (says it is not available in digital form)

County Parcel Data Distribution Policy – 2006, 2011

GIS Consultants, Piedmont, CA
Which Counties Impede Access to Parcel Data?

More Than Cost of Reproduction
- Orange: $375,000
- Santa Clara: $158,000 → $3.14 after lawsuit
- Merced: $1,000 → Free! as of March 15, 2011
- Sierra: $1,000
- Alpine: $650

More Than Cost of Reproduction - Private
- Solano: $13,400
- San Luis Obispo: $12,000
- Madera: $3,123
- Lassen: $2,500
- Del Norte: $1,500

Data Not Available
- Colusa

County Data Access Costs Across the Nation
### A Conflict of Principles

#### Public’s Right to Public Data
- access to public information insures government accountability
- "... the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." CPRA § 6250

#### Public Agency’s Need to Fund Geodata Operations
- Its ability to create, maintain, and disseminate data depends on funding through Taxes, Fees, Capture of Added Value, State Subsidy, or Data Sale.
- "... Yipes! Our department budget was cut"

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**GIS Consultants**, Piedmont, CA
Improving Access to Public Geodata: Strategies for Solution

- Enforcement of Public Records Law
- Use of Standard Data Distribution Policies & License Agreements to Harness the Private Sector for Distributing Data
- Capturing the Value of Using Geodata and Allocating a Portion to Geodata Maintenance
- Data Sharing for Emergency Response: Building Geodata Repositories
- State Government Incentive Payments

CA Attorney General’s Opinion
October 3, 2005

1. **Parcel boundary map data** maintained by a county Assessor in an electronic format is subject to public inspection and copying under provisions of the California Public Record Act.

2. A copy of parcel boundary map data maintained in an electronic format by a county assessor must be furnished promptly upon request of a member of the public.

3. The fee that may be charged by a county for furnishing a copy of parcel boundary map data maintained in an electronic format by a county assessor is generally limited to the amount that covers the direct cost of producing the copy, but may include certain other costs depending upon the particular circumstances as specified in the California Public Records Act.

20 Counties Have Changed Policy to Low or No Cost

GIS Consultants, Piedmont, CA
What about the 8 counties that are not in compliance with the California Public Records Act?

The A.G’s opinion is not a legal interpretation of the law.

A judicial determination must be made in context of a lawsuit.

Enforcement of Public Records Law

June 12, 2006

California First Amendment Coalition sent a Letter of Demand for Data under CPRA 6250 to Santa Clara County
- Most current version of the GIS parcel basemap closed polygons, each tagged with APN
- Each parcel to include these attributes: APN, Situs Address, Air Parcel Status & Address, Adr. Annotation
- Metadata: projection, datum, date of data capture, accuracy
- Database Dictionary, description of contents
- In BOTH .shp and ESRI geodatabase (native) Format

June 26, 2006 Timely Response received: Request REFUSED
- AG Opinion does not apply to "sophisticated GIS basemap"
- Basemap is copyrighted
- Records Exempted by State Law (unspecified)
- Computer Mapping System is software (6254.9) claim that .shp files and geodatabase files are software
Enforcement of Public Records Law

October 11, 2006
CFAC filed a petition with Superior Court of Santa Clara County (a state court) to enforce the CPRA

- As a citizen, CFAC has the right to view and copy the County’s data, for no more than the cost of duplication.
- Citizen’s right includes not having to state how the data will be used (therefore, not bound to sign a non-disclosure agreement).
- GIS basemap data is necessary, when used with other public information, to monitor and inspect the decisions of public agencies; for example, Property Tax Assessment, Zoning Variance Approval, Permits.

Open Data Consortium project

GIS Consultants, Piedmont, CA
GIS Consultants, Piedmont, CA
Public Access to County GIS Basemap Data

June 30, 2012

GIS Consultants, Piedmont, CA
Enforcement of Public Records Law

Santa Clara County’s arguments:
- The basemap is protected by copyright.
- The basemap is protected as a trade secret.
- **The basemap is software.**
- Basemap records are confidential.
- The public will be harmed by release of the basemap to the public.
- Duplicating the basemap puts an undue burden on the County.
- The facts outweigh basemap distribution.

Is the GIS basemap protected by copyright?
- § 6253 (b) makes public records available for both inspection and copying at a fee not to exceed direct costs of duplication. Legislature removed ability of public agencies from using copyright to deny requests for copies of public record.
- Copyright protection would annul the CPRA. "virtually any type of original work of authorship prepared by an employee of a state or local agency, including letters, emails, memos, reports, charts, photographs, graphic drawings, etc., could qualify for copyright protection."
- U.S. Constitution, Article I, Section 8, Subsection 8: "The Congress shall have the power to promote the progress of science and useful arts, by securing for limited times and inventors the exclusive right to their respective writings and discoveries." This suggests that there are creations that need the incentive of exclusive control by the creator before the creative act will occur. Government Agencies operate by mandate, they don't need commercial incentives to perform their duties. - Earl Epstein

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Is the GIS Basemap Software?

- County asserted that the GIS basemap constitutes 'computer software'
  “... 'applications software' is understood to include the instructions that manipulate data and the databases on which those instructions operate.”

- County GIS Managers’ sworn statements:
  - the GIS basemap is a unique program that processes data using mapping functions
  - the GIS basemap is the instrument that instructs the hardware and databases to obtain and structure information, therefore, it qualifies as a computer mapping system, exempt from the CPRA
  - "the entirety of the records in .shp format constitute software" and, "the entirety of the records in geodatabase format constitute software"

- CFAC obtained statement from ESRI’s Director of Software Products: "The .shp file format and the geodatabase format are designed to enable the transfer of geospatial data; they are not software.”
  -- Clint Brown

Enforcement of Public Records Law

Will the public be harmed by release of the basemap?

- County cited fear of a "copycat artist"

- CFAC countered that such a self-serving claim can not retract the public records act.

- County cited that if outside agencies don’t pay for the basemap, support for the GIS program will disappear

- CFAC observed that over 40 counties support their GIS without selling basemap data.
  - Poor public policy and short-sighted management are not valid exemptions to the CPRA.
  - Cf: www.OpenDataconsortium.net
    "10 Ways to Support GIS Without Selling Data"
Superior Court Decision: VICTORY!

May 18, 2007  (7 months after petition filed)
Superior Court directed Santa Clara County to:
1. Provide CFAC with an electronic copy of the GIS basemap, and
2. Charge CFAC the direct cost for the copy provided.

*Citing the state constitution, "a statute shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access"*

*If there's any doubt, data must be given to the requester*

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Superior Court Decision Appealed VICTORY (?)

June 12, 2007
County Filed an Appeal:

- "County GIS Basemap is exempt from application of the CPRA because it has been Protected Critical Infrastructure Information (PCII) by the United States Department of Homeland Security"
  - "Release of this sensitive information into the public domain poses a threat to the public at large, ... potentially allowing terrorists to identify the precise location of the Hetch Hetchy water supply system and plan attacks that can disrupt the main water supply to millions of Bay Area residents"
  - "The County’s request to protect the GIS Basemap from disclosure is ... to protect sensitive infrastructure information not customarily in the public domain."

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GIS Consultants, Piedmont, CA
Will the Public be Harmed by Release of the GIS Basemap?

- County cited Hetch Hetchy "water lines" vulnerable to terrorist attack
  - "the exact location of the Hetch Hetchy water lines is an integral part of the GIS Basemap and not easily segregable."
- CFAC observes: These are not water lines; they are rights-of-way, or parcels, owned by San Francisco PUC

Will the Public be Harmed by Release of GIS Basemap Data?

Three criteria are recommended for deciding whether to remove information from the public record:


1. Do the data show/describe information about critical potential targets (e.g., critical infrastructure)?
2. Do the data provide sufficient specificity to significantly aid a potential attack (e.g., are critical "choke points" shown)?
3. Are the data unavailable elsewhere in the public domain? (e.g., is the subject source a unique source)?

GIS Consultants, Piedmont, CA
GoogleEarth without parcel lines still clearly depicts a right-of-way or easement.

Will the public be harmed by release of the basemap?

Another source of the same Hetch Hetchy information: Santa Clara County Assessor’s Office.

GIS Consultants, Piedmont, CA
Will the Public be Harmed by Release of Santa Clara County’s Basemap?

Three criteria are removing information from the public record are NOT satisfied:

(1) The location of the rights-of-way/parcels is readily available from alternative data sources

(2) The basemap does NOT show "water lines." The rights-of-way do not indicate the specific location of the pipelines.

(3) NO infrastructure “choke points” are shown.

The value of public access to the County’s GIS basemap clearly overbalances the cost of potential terrorist damage * probability of occurrence

Will the Public be Harmed by Release of the GIS Basemap?

- **County’s Last Gasp ...** Designation of GIS basemap as Protected Critical Infrastructure Information (PCII)
  - Under CA Homeland Security Act 6 CFR § 29.6(e), and § 6254(bb), County submitted its "GIS Mapping System" to DHS, and CA OHS, for PCII designation
  - PCII removes data from FOIA or CPRA demand

- CFAC explained that the law is to protect private utility information from FOIA or CPRA demand (made to DHS), it can not inoculate the originator of the data from its CPRA obligation

- CFAC further noted that by distributing the GIS basemap to any third party that pays the fee, County waived any contention that the information must be protected.
Federal homeland security provisions do not apply. Both the Critical Infrastructure Information Act and the accompanying DHS regulations make a distinction between submitters of critical infrastructure information (to DHS) and recipients of PCII (from DHS). The federal prohibition on disclosure of PCII applies only to recipients of PCII from DHS.

- There is no statutory basis either for copyrighting the GIS basemap or for conditioning its release on a licensing agreement.

"End user restrictions are incompatible with the purposes and operation of the CPRA."

- The public interest in disclosure outweighs the public interest in nondisclosure.

- County "remanded" to Superior Court to determine the fee for duplication.

Legal Timeline
CFAC vs Santa Clara County

- June 2006 - CFAC makes CPRA request for data;
  - County refuses the request
- Oct 2006 - CFAC files suit in Superior Court
- Feb 2007 - Superior Court Hearing
- May 2007 - Superior Court Decision (in favor of CFAC)
- June 2007 - County appeals the decision
- Mar 2008 - Court of Appeal decides to review case
- Apr 2008 - Arguments filed
- June 2008 - Amicus Briefs filed
- Jan 2009 - Court of Appeal hearing
- Feb 2009 - Court of Appeal decision (in favor of CFAC)
- Mar 2009 - County requests depublication; declines to appeal to California Supreme Court
- Apr 2009 - Court of Appeal issues "remittur" returning case to Superior Court to determine fee for duplication
- May 2009 - CA Supreme Court denies request for depublication!
- Sept 2009 - CFAC receives County's data, verifies content
A Question of Metadata

- Automatically generated metadata was incomplete

- Need to ask for:
  - Database Dictionary
  - E-R Diagram
  - User Manuals
Copyright of Private Data & CPRA
In California's Government Agencies

2009, then-CIO Terri Takai:

- **Agency contracts** for technical work product such as technical reports, mapping, or data analysis must clearly indicate that any and all materials generated will be subject to public disclosure, notwithstanding any copyright claims.
- This obligation cannot be negotiated out of a contract.
- The receiver of copyrighted material under CPRA is not relieved of any obligations relative to the copyright.
- Disclosure does not give the receiver license to violate the copyright; the receiver may not redistribute copyrighted info.
- Copyrighted documents are still protected by Federal Copyright law - they simply must be disclosed pursuant to the CPRA.

Which Counties Impede Access to Parcel Data?

**More Than Cost of Reproduction**
- Orange $ 375,000
- Sierra $ 1,000
- Alpine $ 650

**More Than Cost of Reproduction - Private**
- Solano $ 13,400
- San Luis Obispo $ 12,000
- Madera $ 3,123
- Lassen $ 2,500
- Del Norte $ 1,500

**Data Not Available**
- Colusa

GIS Consultants, Piedmont, CA
Orange County's Compliance with the Public Records Act

June 21, 2007
Sierra Club (Los Angeles chapter) sent a Letter of Request for Data under CPRA 6250 to Orange County (Assessor)

July 2, 2007
Request REFUSED, County says:
- AG Opinion in not binding
- GIS data is exempt as computer mapping software -- "Software Exemption"

February 9, 2009
Sierra Club cites Santa Clara County decision requiring PRA compliance

March 5, 2009
County refuses again

April 21, 2009
Sierra Club sues Orange County with "Petition for Writ of Mandate to Enforce Public Records Act"
- Unless Sierra Club obtains the requested public records, the public will be denied information prepared at public expense pertaining to the conduct of the public's business essential to monitor its government.

What is the Software Exemption?

§6254.9 (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.
Definition of Terms

What is a Computer Mapping System?
What is a GIS?
What does "includes" mean?

§6254.9 (b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

Sierra Club says "computer mapping systems, computer programs, and computer graphics systems" are examples of software.

County says "computer mapping systems, computer programs, and computer graphics systems" is an enlargement of the definition of software.

GIS Consultants, Piedmont, CA
What is a CMS?

- County says Computer Mapping System is an earlier version of GIS
- Sierra Club says CMS is an earlier type of mapping software; it is not GIS
  - Computer Graphics
  - CAD
  - Automated Mapping System - AMS (Computer Mapping System - CMS)
  - AM/FM
  - GIS

What is GIS?

- County cites ESRI definition, and others:
  "An integrated collection of computer software and data used to view and manage information about geographic places, analyze spatial relationships, and model spatial processes. A GIS provides a framework for gathering and organizing spatial data and related information so that it can be displayed and analyzed." -- GIS From A to Z
- County's Argument:
  - GIS includes software and data
  - County's O.C. Landbase is a GIS
  - GIS is a type of CMS
  - CMS is excluded by §6254.9
  - Therefore, O.C.'s GIS Landbase data is excluded
- ESRI definition should have said:
  "A collection of computer software used to integrate data to view ..."
GIS is Composed of . . . .

GIS is composed of the following components:

- **Software**
- **Data**
- **Hardware**
- **Training**
- **Applications**
- **Staffing**

What is GIS? (cont.)

What is "System"

"A GIS provides a framework for gathering and organizing spatial data and related information so that it can be displayed and analyzed."

- **Sierra Club’s Argument**
  - A "framework for data" can not also be data; GIS (software) is distinct from GIS data
  - GIS "System" refers to all the elements necessary to make use of GIS technology, including:
    - Hardware
    - Software
    - Data
    - Application Programming and Data Models
    - Staffing and Training
    - Administration / Management
    - Maintenance Procedures and Standards
    - Financing
  - CMS "system" refers to software modules; "CMS" does not mean "GIS"
  - § 6254.9 (d) makes it clear: 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.

- **County says** applies to "information" not the format of the information

GIS Consultants, Piedmont, CA
Judicial Decision: Landbase database is exempt under software exemption

- May 21, 2010
  Court decided in favor of Orange County
  - "This Court credits the County’s evidence ... that the OC Landbase in a GIS file format is part of a computer mapping system. To that end, the OC Landbase is not a public record."
  - "Section 6254.9 creates an exemption for GIS file formatted data, but it nevertheless guarantees the public access to non-GIS formatted records containing information stored in a GIS."
  - "Where the plain meaning of a statute is insufficient to resolve a question of interpretation, a court may review the legislative history of the statute and the wider historical circumstances of its enactment ... Indicates that it was designed to protect computer mapping systems (including the data component of such systems) from disclosure, and to authorize public agencies to recoup the costs of developing and maintaining computer mapping systems by selling, leasing, or licensing the system."

- Aug 9, 2010
  Court issued final Statement of Decision for Orange County

"Responsive Records"?

- County offers copies Assessor parcel maps, tract maps, records of survey, etc., at $0.15 per page, for 640,000 parcels
- Sierra Club explains that GIS-structured data is necessary to duplicate or monitor County’s GIS analysis (conduct of the public’s business).
  - Parcel database can be analyzed as a whole by GIS software in ways that are impossible with data in a non-GIS format.
  - Sierra Club has its own GIS software, just requests County’s GIS database.
  - O.C. Landbase can export data without exporting any County software, and has done so previously (GreenInfo Network, 2006).
- Cost of copying thousands of pages is prohibitive; access to information through piles of paper is impeded

GIS Consultants, Piedmont, CA
Taxable Valuation less than half of mine < $30,000

Who Owns These Properties?


GIS Consultants, Piedmont, CA
The Fight Continues: Sierra Club Appeals the Decision

- August 27, 2010
  Sierra Club files petition to the Court of Appeal
    - The OC Landbase contains data only. It does not contain software.
    - The trial court’s interpretation goes against Legislature’s intent.
      - Upon introduction, the bill (AB3265) was immediately amended to apply to “computer software” instead of “proprietary information” and “computer mapping systems” instead of “computer readable data bases.”
    - The plain-meaning interpretation: “Computer software” has the same meaning when used in its common and its technical senses. “Includes Clause” provides illustrative examples of types of computer software, but does not enlarge the definition.
    - The County’s expanded-meaning interpretation: Three enumerated items “computer mapping systems, computer programs, and computer graphics systems” would entail all computer-resident data.

GIS Consultants, Piedmont, CA
Logical Quandary

- If "Computer Mapping System" gets special treatment, so do the other two enumerated items.
- To harmonize the terms “computer software” and “computer mapping systems,” where the former includes the latter, it is necessary either to expand the meaning of “computer software” to include data or to constrain “computer mapping systems” to refer to software only.

The Fight Continues:
Orange County Argues Sierra Club Appeal

September 13, 2010, Orange County says:
- Case is not about a denial of access to information, but whether this information must be produced in a particular format.
- "Definition" of GIS says that data is part of GIS and County's expert says CMS is actually a GIS. Therefore GIS data is exempt from public records disclosure under §6254.9 (b)
- County spent millions of dollars to develop and maintain its Landbase ... needs to recoup its costs.
- The Attorney General misinterpreted Section 6254.9 by adopting a construction that essentially redacts the term “computer mapping system” from the statute.

GIS Consultants, Piedmont, CA
Orange County Wins Appeal

May 31, 2011 – Court of Appeal concludes: "§6254.9 excludes from the Act’s disclosure requirements a geographic information system database like the one at issue here."

- Court recognized that "computer mapping systems" was never defined in the PRA software exclusion, and so it reviewed the legislative history.
  - Finance Department's "fiscal analysis" report stated, "The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial ..."
  - "proprietary information" was replaced with "computer software" "computer readable data bases" was replaced with "computer mapping systems." Report unchanged after the bill's words were substituted.
  - From this, the Court surmised that the intent of the "software" exclusion was to exempt computer mapping system databases so they could be sold to recoup the agency's investment.
- "Whether the increasing use of GIS data in our society requires reconsideration of section 6254.9's exclusion from disclosure is a matter of public policy for the Legislature to consider."

Is It About Money?

- County says, "Petitioner is asking the Court to compel County taxpayers to subsidize Petitioner's enjoyment of the functionality of a GIS without contributing to the costs of maintaining such a system."
- County charges its own taxpayers, including the Orange County Fire District, for the data they already paid for; County even charges its own departments (Registrar of Voters).
- Sierra Club points that 48 other counties have figured out how to maintain their GIS to conduct their mandated duties, without selling data.
Sierra Club Appeals to California Supreme Court

- July 11, 2011 – Sierra Club files CSC appeal.
- Sept 10, 2011 – GIS Amicus letter asking to hear the case
  - 11 GIS Organizations
  - 72 Individual GIS Professionals
- Sept 14, 2011 – CA Supreme Court agrees to hear the case
- Nov 14, 2011 – Sierra Club's brief filed
- Dec 15, 2011 – Orange County's answer brief filed
- Feb 6, 2012 – Sierra Club's rebuttal brief filed
- March 5, 2012 – 9 Amicus Briefs filed
  - 7 in support of Sierra Club
  - 2 in support of Orange County

9 Amicus Curiae Briefs

- Supporting Sierra Club
  - Media and Open Government (CFAC)
  - Academic Researchers in Public Health, Urban Planning and Environmental Justice (UCLA)
  - Jack Cohen (drafted Prop 218, "Right to Vote on Taxes Act")
  - Consumer Date Industry Association, CoreLogic, LexisNexis
  - Electronic Frontier Foundation
  - Advocates for the Environment
  - GIS Community (212 GIS Professionals and 23 GIS Organizations)

- Supporting Orange County
  - League of California Cities and California State Association of Counties
  - California Assessors' Association
GIS Community Amicus Brief

A. “Computer Mapping System” refers to software and only software; it does not include data. GIS data should not be considered different from any other public record data that government agencies use in conducting the people’s business.

B. GIS-compatible database structure is an intrinsic and necessary part of Orange County’s OC Landbase. PDF files do not substitute.

C. The consequences of removing GIS-readable parcel data from the public domain threatens citizens, other counties and cities in many ways.

D. Removing GIS-readable parcel data from the public domain counters explicit national and Federal data policies.

E. Some counties’ policy of excluding GIS data from the public domain is currently causing expensive, negative impacts on CA state government.

F. The 4th District Court, and Orange County, may have misunderstood the concept of “system” in the context of section 6254.9(b).

G. Excel analogy to better understand the relationship between software and data.

GIS Community Amicus Brief

- 212 Individual GIS Professionals
- 23 GIS Professionals’ Organizations

AAG - Association of American Geographers
Advancement Project, Healthy City

BAAMA - Bay Area Automated Mapping Association, Board of Directors

CaGIS - Cartography and Geographic Information Society

CALI - California Association of Licensed Investigators

Californians Aware

CUGOS - Cascadia Users of Geospatial Open Source

Davis Demographics & Planning, Inc.

DMTI Spatial

GeoTec Media

GITA - Geospatial Information Technology Association

GreenInfo Network

Latitude Geographics Group Ltd.

NACIS - North American Cartographic Information Society

NSGIC - National States Geographic Information Council

Oregon Natural Desert Association

OSGeo - Open Source Geospatial Foundation

Pacific Institute

Pacific Institute for Research & Evaluation

Southern California Chapter of URISA

Urban Strategies Council

Vector1Media

WIGICC - Wisconsin Geographic Information Coordination Council
It's About TEAMWORK

Other Amicus Arguments

- 6254.9 does not explicitly exclude data from disclosure
- Usual and ordinary meaning of "software"
- Meaning of 6254.9(b) must harmonize with rest of PRA
- Proposition 59 -> Constitutional Amendment (Art. I, § 3, subd. (b)(2)) "what constitutes a Public Record shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access."
  - Reliance on Legislative history is inappropriate
- Proposition 218 -> Constitutional Amendment (Art. XIII D, § 4 and § 6) require new taxes and property assessments to be voted upon (proportionality requirements). This fee impedes using GIS data to enforce Prop 218 compliance
- Great harm from expansion of number and kind of government data to be excluded (harm to business, harm to news media coverage)
- Subsequent legislation confirms Legislative intent (AB 1293 (2000) passed, but vetoed, to provide subsidies), (AB 1978 failed, (2005) to redefine CMS)
- OC lacks a copyright interest in the geographic data because the data are an unoriginal compilation of public records

GIS Consultants, Piedmont, CA
**Others' Amicus Arguments**

- Confidential, statutorily-protected information could become public record simply because it is stored in a computer mapping system. (CAA)
- Unintended consequence of discouraging Assessors from improving their databases (CAA)
- A holding the GIS files are public records would be irreconcilable with Revenue & Taxation Codes (408, 409) allowing Assessors to charge for data (CAA)
- The plain language and legislative history of 6254.9 supports exclusion of computer mapping systems and GIS-formatted databases from public record (LCC, CSAC)
- Subsequent action of Legislature have not changed policy of 6252.9 (AB 1293, subsidy payments) (LCC, CSAC)
- Trial Court determined that OC Landbase in GIS file format is part of a computer mapping system (because CMS is a GIS and GIS includes data) (LCC, CSAC)

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**Legal Timeline Sierra Club vs Orange County**

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<th>Months</th>
<th>Dates</th>
<th>Events</th>
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<td>0 April 2009</td>
<td>Sierra Club files suit in Superior Court</td>
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<td>7 Nov 2009</td>
<td>Superior Court Tentative Ruling (in favor of Orange County)</td>
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<td>12 April 2010</td>
<td>Evidentiary Hearing</td>
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<td>12 April 2010</td>
<td>Trial Court ruled in favor of Orange County</td>
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<td>16 Aug 2010</td>
<td>Court issues final statement of decision</td>
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<td>16 Aug 2010</td>
<td>Sierra Club petition to Court of Appeal</td>
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<td>17 Sept 2010</td>
<td>Orange County responds (final response Nov 2010)</td>
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<td>21 Jan 2011</td>
<td>Amicus Briefs filed</td>
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<td>23 March 2011</td>
<td>Oral Arguments in Court of Appeal</td>
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<td>25 June 2011</td>
<td>Court of Appeal decides in favor of Orange County</td>
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<td>33 Feb 2012</td>
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<td>34 Mar 2012</td>
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Meanwhile, back in Santa Clara County

- No basemap data have been released since the April, 2009 version
- County claims it isn’t maintaining nor distributing more current data
  - Would they allow their investment to degenerate over time?
  - Would they deny internal departments the current, up-to-date versions of the data they need to operate?
  - They offer on-line subscription to current database for $14,000+ per year.
- While the 2009 version contained situs address and APNs, they now sell the situs-APN table for an extra $2,000!

Are We Surfing the GeoData?
My Opinion

- 49 other California counties have developed and are maintaining similarly expensive GIS databases without selling their data. "Poor fiscal management should not be an exemption for access to public records."

- Government agencies decided to expend the cost of building a GIS database because of the benefits that GIS would provide them in fulfilling their mandated tasks. "These benefits are return enough on their investment and do not justify additional revenue from data sales."

Your Opinion?
Public Access to County GIS Basemap Data

What Can You Do To Preserve Access To GIS Data?

Reference Links

- Court timeline at http://appellatecases.courtinfo.ca.gov/search/dockets.cfm?dist=0&doc_id=1985061&q=110968&h=964387314
- Court documents at http://www.calpubrec.org/oclawsuit/appeal/index.html
- NSGIC Data Sharing Guidelines http://www.nsgic.org/data-sharing-work-group
Defending Public Access to our Governments' GeoData

The Supreme Decision

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