

## Public Policy Issues Affecting GIS Professionals

### Assuring Access to our Governments' GeoData

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## Agenda

- **Assuring Access to the Data used by our government**
  - Santa Clara County Lawsuit summary
  - Orange County Lawsuit: current status

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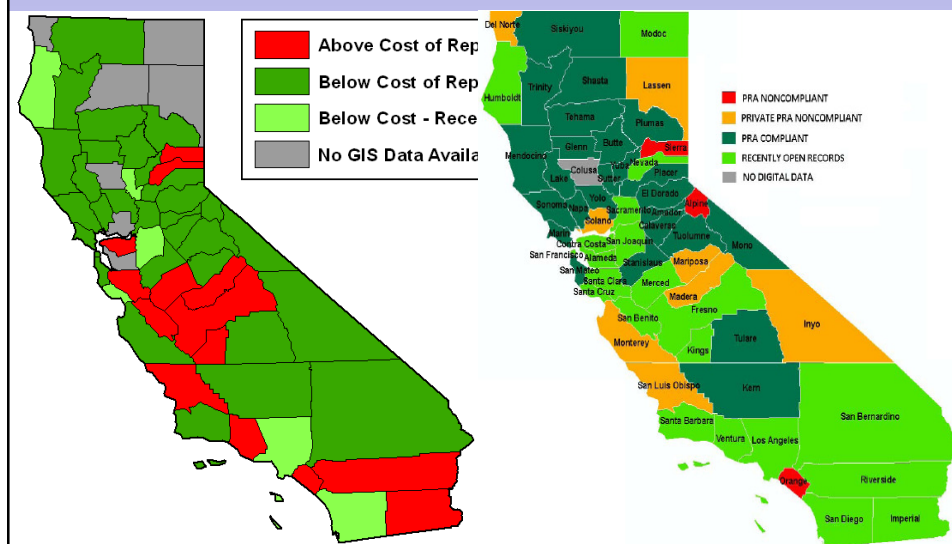
## Geographic Parcel Data in California's 58 Counties

- 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)

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## County Parcel Data Distribution Policy – 2006, 2011



## Which Counties Sustain Access to Parcel Data?

<b>Provide Data at No Cost</b>	<b>Sell at Cost of Reproduction</b>
<ul style="list-style-type: none"> <li>o Alameda</li> <li>o Amador</li> <li>o Contra Costa</li> <li>o Fresno</li> <li>o Humboldt</li> <li>o Kern</li> <li>o Lake</li> <li>o Marin</li> <li>o Monterey</li> <li>o Nevada</li> <li>o Napa</li> <li>o Plumas</li> <li>o San Benito</li> <li>o San Bernardino</li> <li>o San Francisco</li> <li>o San Joaquin</li> <li>o Santa Cruz</li> <li>o Siskiyou</li> <li>o Sonoma</li> <li>o Stanislaus</li> <li>o Sutter</li> <li>o Tehama</li> <li>o Trinity</li> <li>o Tulare</li> <li>o Ventura</li> <li>o Yolo</li> </ul>	<ul style="list-style-type: none"> <li>o Kings \$ 300</li> <li>o Santa Barbara \$ 300</li> <li>o Sacramento \$ 250</li> <li>o Butte \$ 150</li> <li>o Imperial \$ 100</li> <li>o Inyo \$ 100</li> <li>o San Mateo \$ 100</li> <li>o Placer \$ 90</li> <li>o El Dorado \$ 63</li> <li>o Calaveras \$ 50</li> <li>o Glenn \$ 40</li> <li>o Mariposa \$ 35</li> <li>o Shasta \$ 35</li> <li>o Yuba \$ 35</li> <li>o Modoc \$ 30</li> <li>o Mono \$ 25</li> <li>o Mendocino \$ 22</li> <li>o Tuolumne \$ 10</li> <li>o Riverside \$ 8</li> <li>o Los Angeles \$ 7</li> <li>o San Diego \$ 5</li> <li>o Santa Clara <del>\$ 158,000</del> \$ 3</li> </ul>

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## Which Counties Impede Access to Parcel Data?

<b>More Than Cost of Reproduction</b>	
o Orange	\$ 375,000
o Santa Clara	<del>\$ 158,000</del> → \$3.14 after lawsuit
o Merced	<del>\$ 1,000</del> → Free! as of March 15, 2011
o Sierra	\$ 1,000
o Alpine	\$ 650
<b>More Than Cost of Reproduction - Private</b>	
o Solano	\$ 13,400
o San Luis Obispo	\$ 12,000
o Madera	\$ 3,123
o Lassen	\$ 2,500
o Del Norte	\$ 1,500
<b>Data Not Available</b>	
o Colusa	

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## Data Distribution Policy Core Issue: COST

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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## 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.

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## 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.**

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## 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**

- o Most current version of the GIS parcel basemap closed polygons, each tagged with APN
- o Each parcel to include these attributes: APN, Situs Address, Air Parcel Status & Address, Adr. Annotation
- o Metadata: projection, datum, date of data capture, accuracy
- o Database Dictionary, description of contents
- o In BOTH .shp and ESRI geodatabase (native) Format

**June 26, 2006 Timely Response received: Request REFUSED**

- o AG Opinion does not apply to "sophisticated GIS basemap"
- o Basemap is copyrighted
- o Records Exempted by State Law (unspecified)
- o Computer Mapping System is software (6254.9)
- o claim that .shp files and geodatabase files are software

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## Enforcement of Public Records Law

**October 11, 2006**

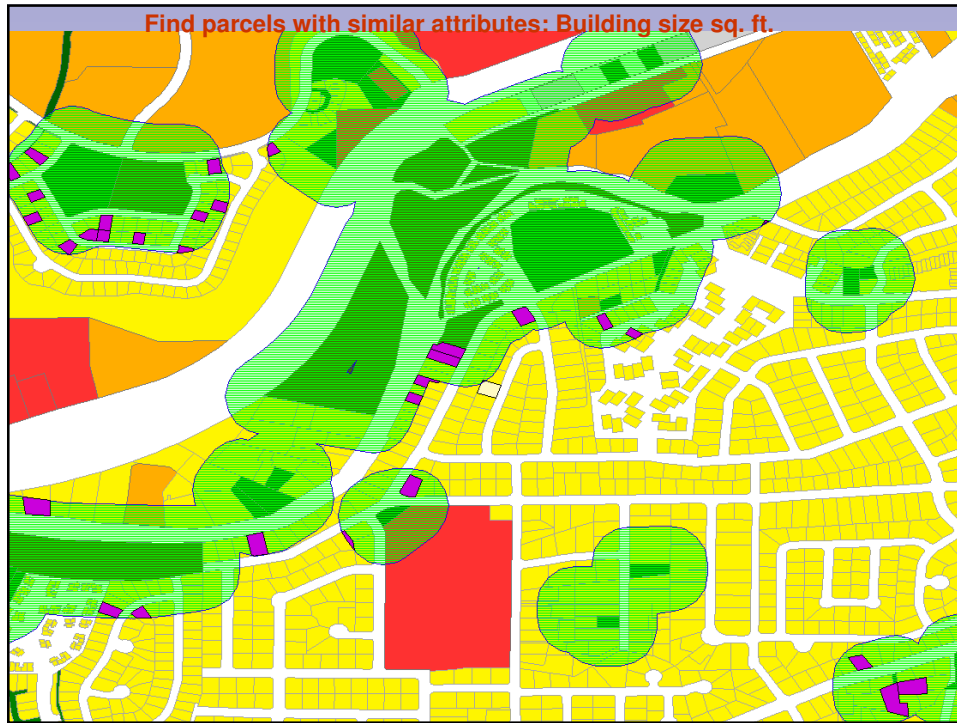
**CFAC filed a petition with Superior Court of Santa Clara County (a state court) to enforce the CPRA**

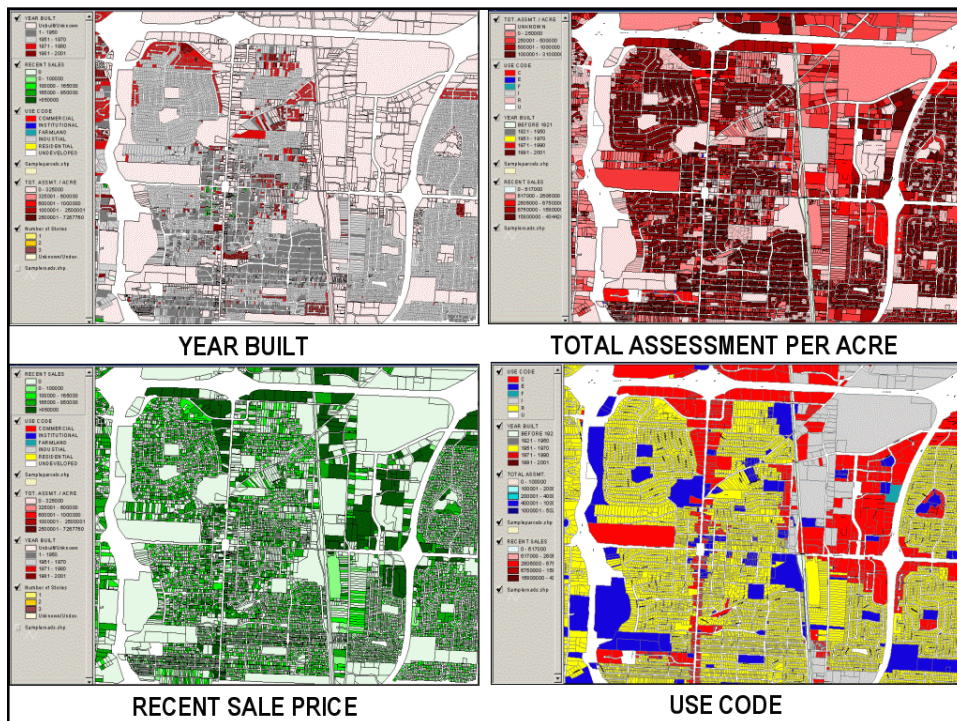
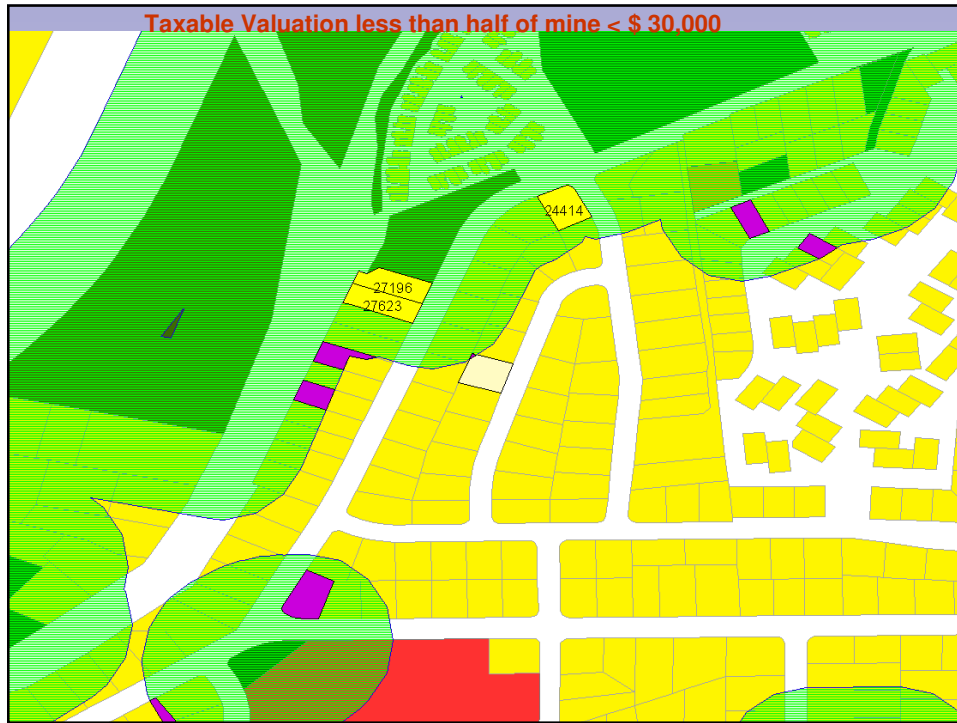
- **As a citizen, CFAC has the right to view and copy the County's data, for no more than the cost of duplication**
- **Citizen's right includes not having to state how the data will be used (therefore, not bound to sign a non-disclosure agreement).**
- **GIS basemap data is necessary, when used with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

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## 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.**

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## Enforcement of Public Records Law

### 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:** ".shp file format and the geodatabase format are designed to enable the transfer of geospatial data; they are not software."  
 -- Clint Brown

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## 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.**

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## 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," the Court concluded that the County failed to show a "clear overbalance" on the side of non-disclosure.*

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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."

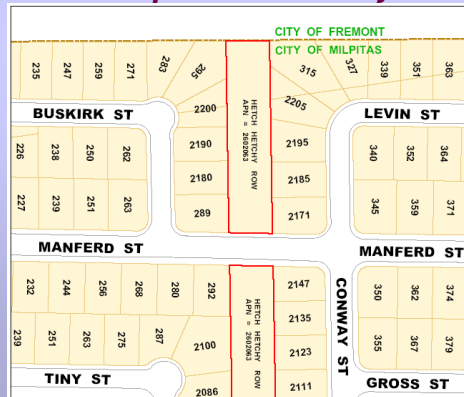
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## Will the Public be Harmed by Release of the GIS Basemap?

- 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

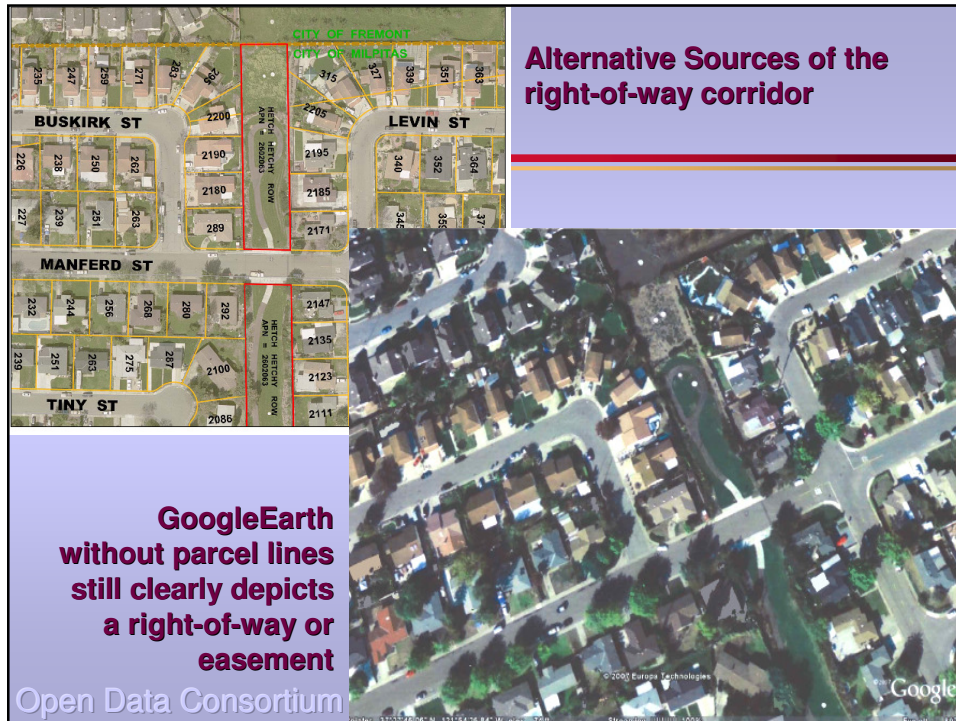


## Will the Public be Harmed by Release of GIS Basemap Data?

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)?

Cf: "Mapping the Risks: Assessing the Homeland Security Implications of Publicly Available Geospatial Information", Rand Corp. study for NGA, 2004




**Alternative Sources of the right-of-way corridor**

**GoogleEarth without parcel lines still clearly depicts a right-of-way or easement**

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**Will the public be harmed by release of the basemap?**



**Another source of the same Hetch Hetchy information: Santa Clara County Assessor's Office**

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## 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*

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## 77 GIS Amicus Brief Co-Signers

- **55 Geospatial Professionals**

- **22 Geospatial Organizations**

**Great Oaks Water Company**

American Association of Geographers

ASL Recycling

Boundary Solutions, Inc.

California CAD Solutions, Inc.

Davis Demographics & Planning, Inc.

Delaware County Auditor's GIS Division

Erich Seamon and Associates LLC

eWAM Associates

GeoAnalytics, Inc.

GeoWorld Magazine/GeoTec Media

GISCafe.com

Green Info Network

LACO Associates

Mike Bobbitt & Associates

Moss & Associates, Real Estate Appraisers

North American Cartographic Information Society

RMS, Inc.

Southern California Chapter of URISA, Board of Directors

The Harlow Report

University Consortium for Geographic Information Science

Vector1 Media

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## Appeals Court Decision

February 5, 2009

- 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.**

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## Legal Timeline CFAC vs Santa Clara County

	June 2006	- CFAC makes CPRA request for data;
<u>months</u>		- County refuses the request
0	Oct 2006	- CFAC files suit in Superior Court
4	Feb 2007	- Superior Court Hearing
7	May 2007	- Superior Court Decision (in favor of CFAC)
8	June 2007	- County appeals the decision
17	Mar 2008	- Court of Appeal decides to review case
18	Apr 2008	- Arguments filed
20	June 2008	- Amicus Briefs filed
27	Jan 2009	- Court of Appeal hearing
28	Feb 2009	- <b>Court of Appeal decision (in favor of CFAC)</b>
29	Mar 2009	- County requests <b>depublication</b> ; declines to appeal to California Supreme Court
30	Apr 2009	- Court of Appeal issues "remittur" returning case to Superior Court to determine fee for duplication
31	May 2009	- CA Supreme Court denies request for depublication!
35	Sept 2009	- CFAC receives County's data, verifies content

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### A Question of Metadata

- Automatically generated metadata was incomplete

```
Entity_and_Attribute_Information:
Detailed_Description:
Entity_Type:
  Entity_Type_Label: SCC_CQ03_FY09_Land_Polygon
Attribute:
  Attribute_Label: OBJECTID
  Attribute_Definition:
    Internal feature number.
  Attribute_Definition_Source:
    ESRI
  Attribute_Domain_Values:
    Unrepresentable_Domain:
      Sequential unique whole numbers that are automatically generated.
Attribute:
  Attribute_Label: PID
Attribute:
  Attribute_Label: APN
Attribute:
  Attribute_Label: PARTNERPID
Attribute:
  Attribute_Label: PARTNERFID
Attribute:
  Attribute_Label: FEATURE
Attribute:
  Attribute_Label: HOUSENUMTEXT
Attribute:
  Attribute_Label: EXTSOURCE
Attribute:
  Attribute_Label: FEATUREEXCEPTION
Attribute:
  Attribute_Label: CREATEDDATE
Attribute:
  Attribute_Label: MODIFIEDDATE
```

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### A Question of Metadata

- Automatically generated metadata was incomplete
- Need to ask for:
  - Database Dictionary
  - E-R Diagram
  - User Manuals

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## CA Court of Appeal on the Question of Copyright

- State law “determines whether [a public official] may claim a copyright in his office’s creations.”
- “Nothing in this *section* is intended to *limit* any copyright protections.” (§ 6254.9) is a legislative *recognition* that copyright protection for software is available in a proper case; it cannot be read as an affirmative *grant of authority* to obtain and hold copyrights. The Legislature knows how to explicitly authorize public bodies to secure copyrights when it means to do so.
- "Having found no specific statutory copyright authorization, ... **we conclude that end user restrictions are incompatible with the purposes and operation of the CPRA.**"
- By express legislative mandate, the CPRA “**does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.**”

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## 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, not withstanding 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; **receiver may not redistribute copyrighted info.**
- Copyrighted documents are still protected by Federal Copyright law - they simply must be disclosed pursuant to the CPRA.

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## Which Counties Impede Access to Parcel Data?

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**More Than Cost of Reproduction**

- o Orange                 \$ 375,000
- o Sierra                 \$    1,000
- o Alpine                 \$     650

**More Than Cost of Reproduction - Private**

- o Solano                 \$ 13,400
- o San Luis Obispo     \$ 12,000
- o Madera                \$   3,123
- o Lassen                \$   2,500
- o Del Norte             \$   1,500

**Data Not Available**

- o Colusa

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## Sierra Club PRA Request to Orange County

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

- o Parcel data for all parcels in Orange County (640,000+), in electronic format, preferably ESRI .shp files
- o GIS parcel basemap polygons, each georeferenced, tagged with APN, and also situs address, owner's name and address
- o In ESRI .shp and ESRI geodatabase (native) Format

**July 2, 2007**  
**Request REFUSED, County says:**

- o AG Opinion in not binding
- o Basemap is copyrighted
- o GIS data is compiled through copyright-protected software

**April 28, 2008**  
 Sierra Club requests again (this time to O.C. Public Works)

**June 6, 2008, Request REFUSED, County says:**  
**County's computer mapping system (CMS) is exempt from CPRA by §6254.9 (software exemption)**  
**County offers an alternative ("Responsive Records")**

- o Source documents and printouts from O.C. Landbase
- o On-line application to query individual parcels

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## Enforcing Orange County's Compliance with the Public Records Act

February 9, 2009

Sierra Club cites Santa Clara County decision requiring PRA compliance

March 5, 2009

County refuses again

March 30, 2009

Sierra Club requests again (MGE or Oracle Spatial format)

April 2, 2009

County refuses again

April 21, 2009

Sierra Club sues Orange County with "Petition for Writ of Mandate to Enforce Public Records Act"

- o 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

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## 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.

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## 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.

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## 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

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## 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 ..."

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## 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**

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## "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

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## 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.

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## Tentative Ruling in favor of Orange County

November 5, 2009 – Judge James J. Di Cesare:

- **Santa Clara decision does not apply** because S.C. County conceded the software issue in trial court and did not take it to Court of Appeal for a determination.
- O.C. Landbase in GIS format contains public record information but also computer software that is exempt
- Sierra Club fails to recognize that its request ... cannot be accomplished without **execution of the computer mapping system software** which the County has a statutory right to license under §6254.9
- The County has shown that all of the revenue from its O.C. Landbase accounts for 26% [\$183,000/yr] of the costs to keep the Landbase up to date

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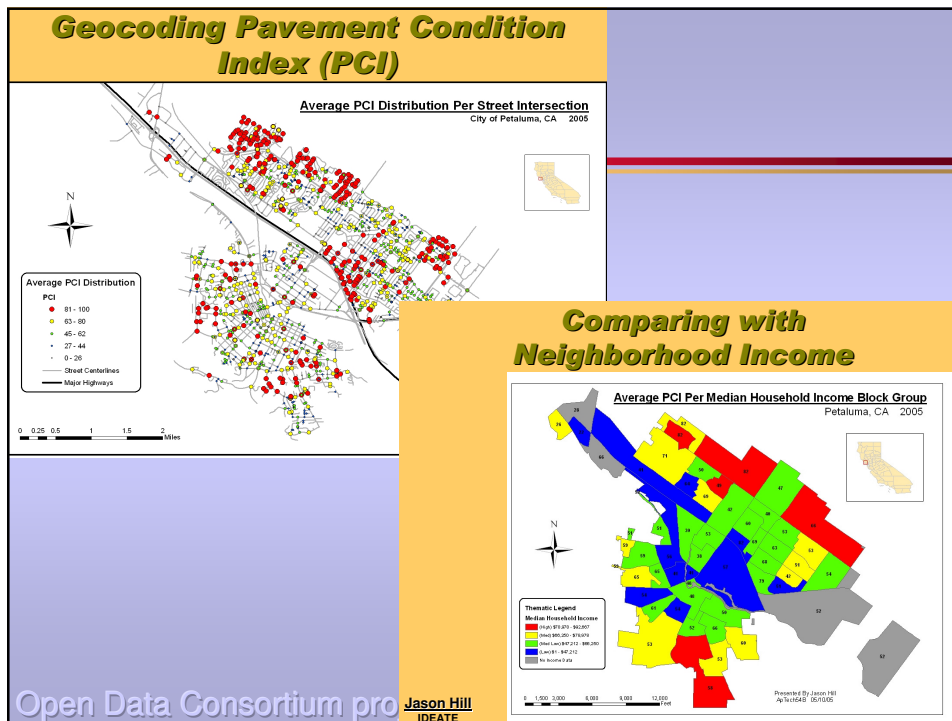
## Judicial Evidentiary Hearing to understand GIS

April 13, 2010

- o Sierra Club technical expert describes how GIS analysis is the only way to determine if an individual's property is assessed consistently, or if other County functions (permits, variances) are conducted equitably.

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## Judicial Evidentiary Hearing to understand GIS

April 13, 2010

- o Sierra Club technical expert describes how GIS analysis is the only way to determine if an individual's property is assessed consistently, or if other County functions (permits, variances) are conducted equitably.
- o GIS analysis is only possible if data are structured in specified tables and fields. **County admits, "GIS data requires GIS structure to conduct GIS analysis."**
- o County stipulates that **O.C. Landbase contains data, not software**, but that GIS data is exempted as CMS.
- o County admits that **a copy of its O.C. Landbase exists and can be duplicated with Windows' "Copy" command**, without running its GIS software.

Is GIS database-structured data "software"? or is it "data"?

The Judge asked, "When someone requests information, is it just the data that is required, or is it also the format that allows manipulation?"  
Does 'data' include its structure in the database?

Is GIS data, in a database structure, exempted by 6254.9?

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## Judicial Decision: Landbase database is software

• May 21, 2010

Court decided in favor of Orange County

- o "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."
- o "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 ..."
- o "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

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## The Fight Continues: Sierra Club Appeals the Decision

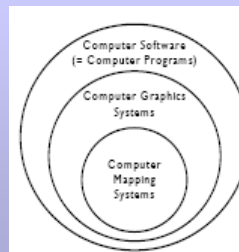
- August 27, 2010  
Sierra Club files petition to the Court of Appeal
  - The OC Landbase contains data only. It does not contain software.
  - The only issue in this case is whether the Public Record Act's computer-software exception (6254.9) applies to GIS data such as the OC Landbase.
  - The trial court's interpretation **does considerable violence** to the plain meaning of the statute, goes against the legislature's intent, and clashes with the public policy of disclosure of the California Constitution.
    - Upon introduction, the bill (AB3265) was immediately amended to apply to **"computer software" instead of "proprietary information."**
  - The issue is whether the legislature meant for the term to include computer mapping system software only, or, in addition, the GIS data upon which it operates.
    - **The plain-meaning interpretation:** "Computer software" has the same meaning when used in its common and its technical senses. §6254.9(b) (the "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, to get special consideration: computer mapping systems, computer programs, and computer graphics systems. "Computer mapping systems" includes the data that mapping software operates upon in addition to the software itself.

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## 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.



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## 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.

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## Amicus Brief Arguments

- GIS Community (20 signatories)
  - GIS data is becoming so integrated into most databases that no clear distinction is possible, and the ruling could exempt nearly all public agency data.
  - Trial court did not understand the meaning or the legal import of software "execution," and therefore the trial court's ruling was erroneous
  - Ambiguity in meaning of term "system."
- CFAC (representing 23 news publishers)
  - "Computer Mapping System" is not defined
  - Legislative history shows "data" is excluded, previous versions removed "proprietary information" and "computer readable databases" from the bill.
  - Earlier decision (Santa Clara County) controls in this case.
  - §6253.9 says, "agency shall make the information available in any electronic format in which it holds the information."

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## More Amicus Brief Arguments

- **Open Monterey Project** (unincorporated nonprofit association)
  - The case before this Court will significantly affect the ability of residents, citizen groups, businesses, and small organizations to effectively participate in the processes of local governmental decision making.
- **Academic Researchers In Public Health, Urban Planning and Environmental Justice**
  - Orange County did not develop any software, which is a requirement for the § 6254.9 exemption to apply.
- **Consumer Data Industry Association, CoreLogic, LexisNexis, National Association Of Professional Background Screeners**
  - Value to the public and to businesses of government geospatial data
- **League of California Cities, California State Association of Counties**
  - Without the protection afforded by Government Code section 6254.9, some cities and counties could not develop and maintain their computer mapping systems at current levels.

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## 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.
  - "proprietary information" was replaced with "computer software"
  - "computer readable data bases" was replaced with "computer mapping systems."
  - Finance Department's "fiscal analysis" report (unchanged) stated, "The potential revenue generated by the sale of computer programs, graphics, and *information data bases* could be substantial ..."
  - 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."

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## Legal Timeline Sierra Club vs Orange County

June 2007	- Sierra Club makes CPRA request for data
July 2007	- Orange County refuses
April 2008	- Sierra Club makes CPRA request for data
June 2008	- Orange County refuses
Feb 2009	- Sierra Club makes CPRA request for data
March 2009	- Orange County refuses
March 2009	- Sierra Club makes CPRA request for data
April 2009	- Orange County refuses
Months_0 April 2009	- Sierra Club files suit in Superior Court
7 Nov 2009	- Superior Court Tentative Ruling (in favor of Orange County)
12 April 2010	- Evidentiary Hearing
12 April 2010	- Court ruled in favor of Orange County
16 Aug 2010	- Court issues final Statement of Decision
16 Aug 2010	- Sierra Club petition to Court of Appeal
17 Sept 2010	- Orange County responds (final response Nov 2010)
21 Jan 2011	- Amicus Briefs filed
23 March 2011	- Oral Arguments in Court of Appeal
25 June 2011	- Court of Appeal decides in favor of Orange County
26 July 2011	- Sierra Club appeals to California Supreme Court

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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!**

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## 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?

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## Sierra Club to Appeal to California Supreme Court

- July 11, 2011 – Sierra Club files CSC appeal.
- You can help; Sierra Club needs \$2,000 to continue the appeal. Contact:  
Dean Wallraff  
dw@aenv.org  
818-679-3141 or 562-216-4444

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**Public Policy Issues  
Affecting GIS Professionals**

**Assuring Access to  
our Governments' GeoData**

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