

Defending Public Access to our Governments' GeoData

The Supreme Decision

Bruce Joffe, GISP, AICP
Organizer, Open Data Consortium
Principal, GIS Consultants
Piedmont, CA

GIS.Consultants@joffes.com
510-508-0213

Open Data Consortium project

GIS Consultants

Agenda

- **Assuring Access to the Data used by our government**
 - Santa Clara County Lawsuit summary
 - **Orange County Lawsuit: current status**
 - Copyright
 - Homeland Security
 - Software, Data, and the meaning of "System"
 - Public Agency Responsibility in a Democracy
 - Citizen Responsibility in a Democracy

Open Data Consortium project

GIS Consultants

What Basic Resource Is Needed To Start A Geoanalysis Project?



Geographic Information System
County of San Mateo

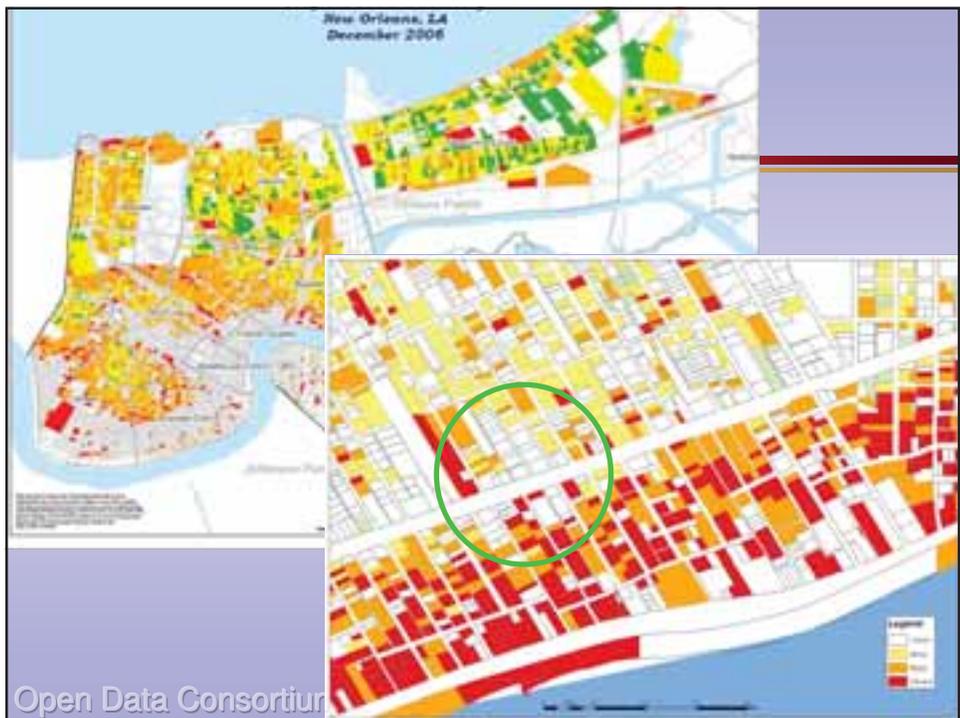
Thursday, September 14, 2011

Notification of Parcels Within 300 Ft.

SELECTED PROPERTY

Where: No situs info
Owner: John R Balknap, 233 Club Dr, San Carlos, CA, 94001; 233 Club Dr, San Carlos, CA, 94070-1618
APN: 049091280

ADDRESS	CITY	STATE	ZIP			
Western	Tucson	AZ	85750			
ica Ave	San Bruno	CA	94066			
ton Ave	San Carlos	CA	94070-1664			
ven Lakes W	West End	NC	27376-9300			
ven Lakes W	West End	NC	27376-9300			
y Ln	Atherton	CA	94027-3960			
1st St	San Jose	CA	95112-4598			
n Ave	San Francisco	CA	94121-2626			
n Ave	San Francisco	CA	94121-2626			
n Ave	San Francisco	CA	94121-2626			
nces Ln	San Carlos	CA	94070-4462			
nces Ln	San Carlos	CA	94070-4462			
nces Ln	San Carlos	CA	94070-4462			
nces Ln	San Carlos	CA	94070-4462			
nces Ln	San Carlos	CA	94070-4462			
b Dr	San Carlos	CA	94070-1617			
b Dr	San Carlos	CA	94070-1617			
b Dr	San Carlos	CA	94070-1616			
wagh Rd	Hillsborough	CA	94070-6806			
195	Fort Dick	CA	95538			
ley Ave	San Carlos	CA	94070-1656			
ley Ave	San Carlos	CA	94070-1656			
049091170	John R Balknap		233 Club Dr	San Carlos	CA	94070-1616
049091280	John R Balknap		233 Club Dr	San Carlos	CA	94070-1616
049090320	Kirkaid Daniel L & K E Trs		270 Club Dr	San Carlos	CA	94070-1617
049092330	La Vlar Dennis M		164 Lynton Ave	San Carlos	CA	94070-1617
049091130	Lynagh Finbar		233 Club Dr	San Carlos	CA	94070-1617



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)**

Open Data Consortium project

GIS Consultants

County Parcel Data Distribution Policy – 2006, 2012



Which Counties Impede Access to Parcel Data?

More Than Cost of Reproduction

- o **Orange** \$ 375,000
- o Santa Clara \$ ~~158,000~~ → \$3.14 after lawsuit, April 2009
- o Merced \$ ~~1,000~~ → Free! as of March 15, 2011
- 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

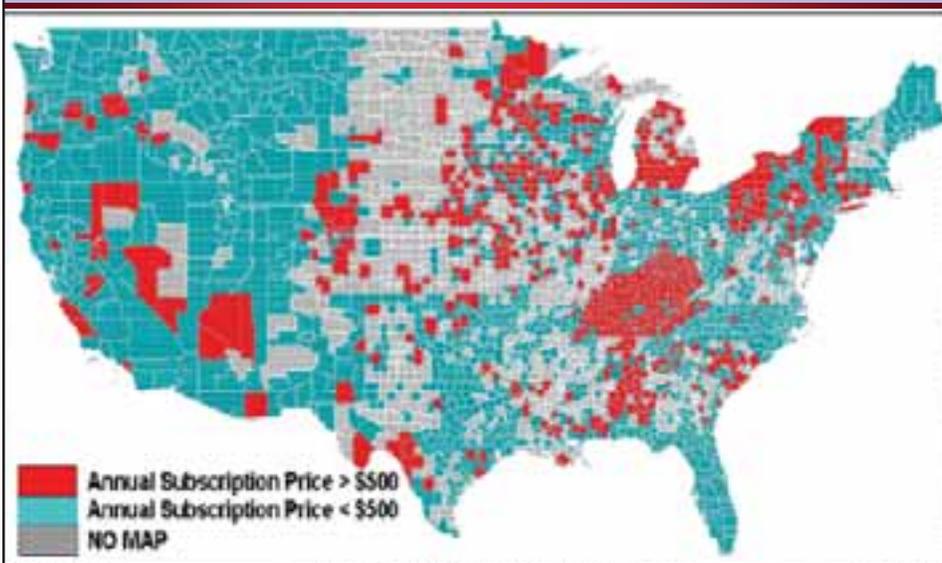
Data Not Available

- o Colusa

Open Data Consortium project

GIS Consultants

Digital Parcel Data Access Cost, by County, Across the Nation





Data Distribution Policy
Governments' Accountability v. 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 "

Open Data Consortium project GIS Consultants

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**



Open Data Consortium project

GIS Consultants

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

Open Data Consortium project

GIS Consultants

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.

Open Data Consortium project

GIS Consultants

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)**

Open Data Consortium project

GIS Consultants

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

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.**

Open Data Consortium project

GIS Consultants

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

Open Data Consortium project

GIS Consultants

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

Open Data Consortium project

GIS Consultants

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"

Open Data Consortium project

GIS Consultants

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

Open Data Consortium project

GIS Consultants

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."

Open Data Consortium project

GIS Consultants

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:

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

- (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)?

Open Data Consortium project

GIS Consultants



Will the public be harmed by release of the basemap?



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

Open Data Consortium projectGIS Consultants

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***

Open Data Consortium projectGIS Consultants

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.

Open Data Consortium project

GIS Consultants

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.

Open Data Consortium project

GIS Consultants

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	- Court of Appeal decision (in favor of CFAC)
29 Mar 2009	- County requests depublication ; 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

Open Data Consortium project GIS Consultants

A Question of Metadata

- Automatically generated metadata was incomplete

```

Entity and Attribute Information
Detailed Description:
Entity Type:
  Entity_Type_Label: SCC_CQ01_FT09_Land_Polys
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_Label: PID
  Attribute_Label: APN
  Attribute_Label: PARTNERPID
  Attribute_Label: PARTNERPID
  Attribute_Label: FEATURE
  Attribute_Label: HOUSENUMTEXT
  Attribute_Label: EXTSOURCE
  Attribute_Label: FEATUREDESCRIPTION
  Attribute_Label: CREATEDDATE
  Attribute_Label: MODIFIEDDATE
    
```

Open Data Consultants

A Question of Metadata

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

Open Data Consortium project

GIS Consultants

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.

Open Data Consortium project

GIS Consultants

Which Counties Impede Access to Parcel Data?

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**

Open Data Consortium project

GIS Consultants

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:

- o AG Opinion in not binding
- o **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"

- 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

Open Data Consortium project

GIS Consultants

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.

Open Data Consortium project

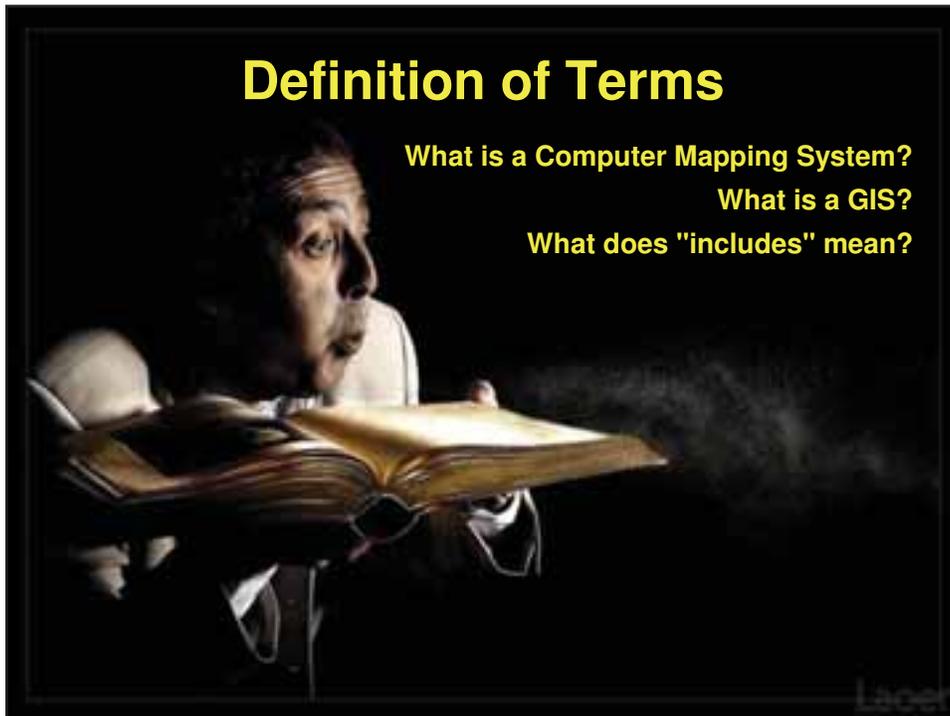
GIS Consultants

Definition of Terms

What is a Computer Mapping System?

What is a GIS?

What does "includes" mean?



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

Open Data Consortium project

GIS Consultants

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 ..."

Open Data Consortium project

GIS Consultants

What is a Geographic Information System? 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**
 - 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"
 - A "framework for data" can not also be data; GIS (software) is distinct from GIS data
 - § 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**
 Open Data Consortium project GIS Consultants

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.

Open Data Consortium project

GIS Consultants

What Does "Includes" Mean?

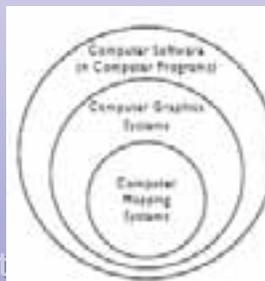
- Sierra Club said:
 - The plain-meaning interpretation: "Computer software" has the same meaning when used in its common and its technical senses. "Includes Clause" provides illustrative examples of types of computer software, but does not enlarge the definition.
 - The County's expanded-meaning interpretation: Three enumerated items "computer mapping systems, computer programs, and computer graphics systems" would entail all computer-resident data.

Open Data Consortium project

GIS Consultants

Logical Quandary: is all data "included" with "Computer Programs"

- 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.



Open Data Consortium project

GIS Consultants

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

Open Data Consortium project

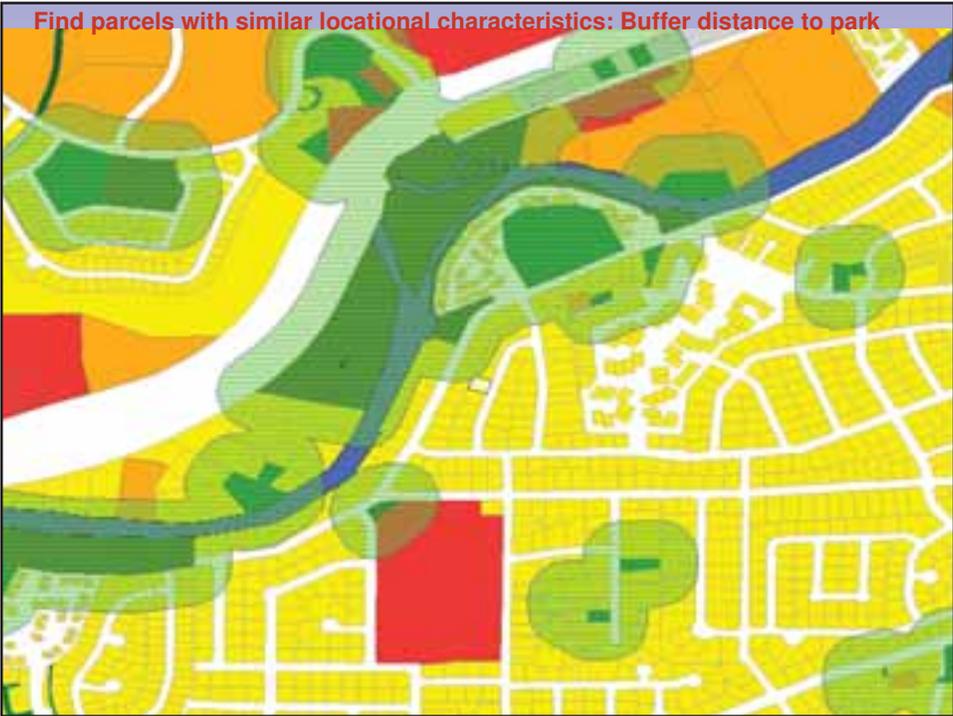
GIS Consultants

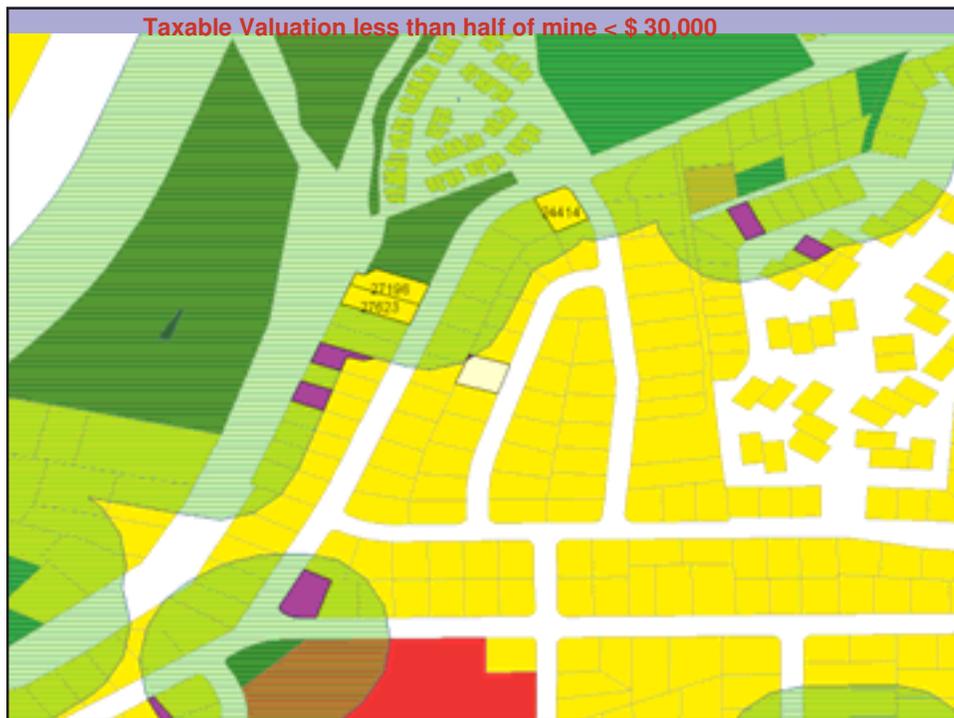
"Responsive Records"?

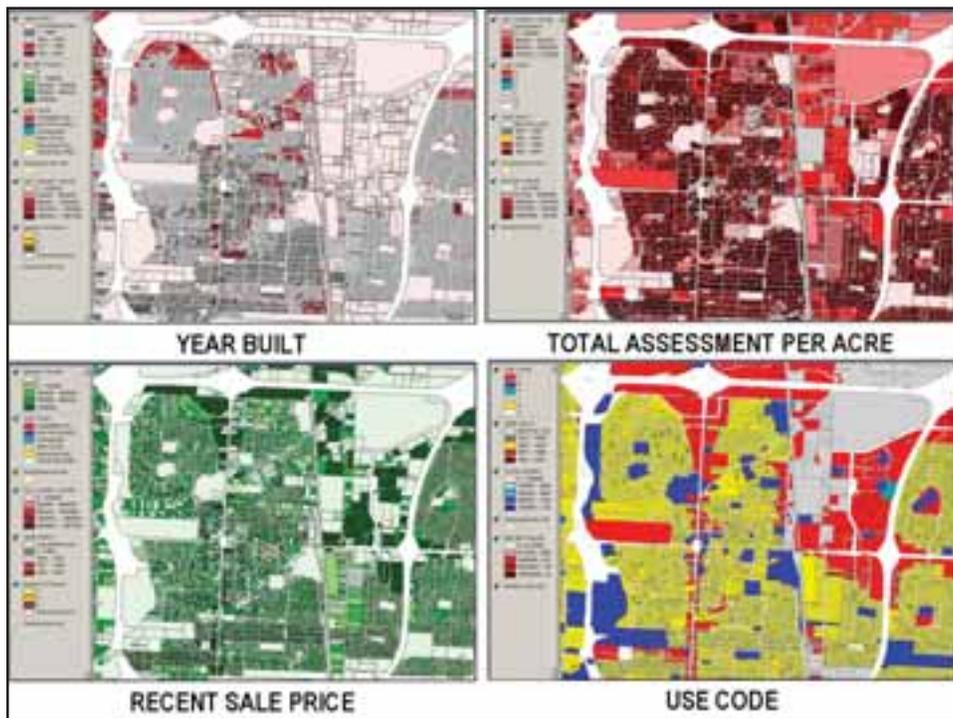
- County offers copies Assessor parcel maps, tract maps, records of survey, etc., at \$0.15 per page, for 640,000 parcels
- Sierra Club explains that **GIS-structured data is necessary** to duplicate or monitor County's GIS analysis (conduct of the public's business).
 - Parcel database can be analyzed 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**

Open Data Consortium project

GIS Consultants







USA TODAY ■ **Denver foreclosures:
One hard hit neighborhood at a glance**

Lenders have forced or sold 2,700 houses in Denver last year; officials expect 14,000 this year, indicating a national recession. Among the hardest-hit neighborhoods are the ones shown in red on this map. Click a property for details.

Regional Map Reset Map

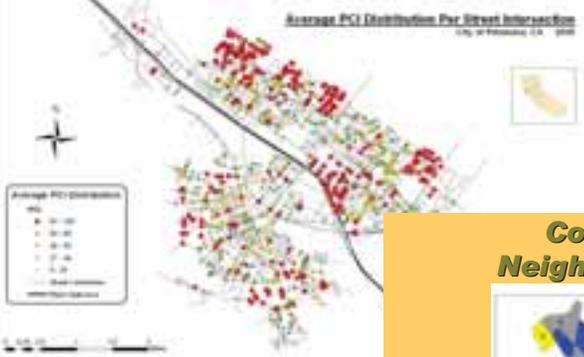


http://www.usatoday.com/news/graphics/foreclosure_map/foreclose.htm

Open Data Consortium project GIS Consultants

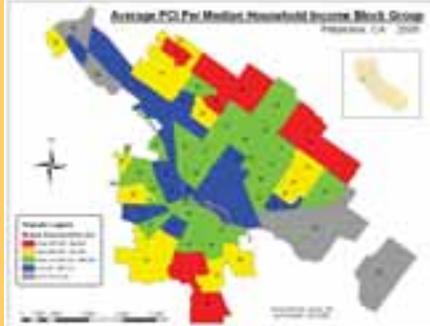
Geocoding Pavement Condition Index (PCI)

Average PCI Distribution Per Street Intersection
City of Fremont, CA - 2008



Comparing with Neighborhood Income

Average PCI Per Median Household Income, Block Group
Fremont, CA - 2008



Open Data Consortium project Jason Hill
IDEATE

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:
"proprietary information" was replaced by "computer software;" and "computer readable data bases" was replaced by "computer mapping systems."

Open Data Consortium project

GIS Consultants

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. Is GIS-compatible format public record?**
- "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.

Open Data Consortium project

GIS Consultants

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.”

Open Data Consortium project

GIS Consultants

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.

Open Data Consortium project

GIS Consultants

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."**

Open Data Consortium project

GIS Consultants

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."

But, 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 49 other counties have figured out how to maintain their GIS to conduct their mandated duties, without selling data.**

Open Data Consortium project

GIS Consultants

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
- May 7, 2013 – Hearing before the CA Supreme Court

Open Data Consortium project

GIS Consultants

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

Open Data Consortium project

GIS Consultants

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.

Open Data Consortium project

GIS Consultants

GIS Community Amicus Brief

- **212 Individual GIS Professionals**
- **23 GIS Professionals' Organizations**

AAG - Association of American Geographers
 Advancement Project, Healthy City

BAAMA Chapter of **URISA** - 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

Open Data Consortium project

GIS Consultants

It's About TEAMWORK



Open Data Consortium project GIS Consultants

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, to provide subsidies, passed (2000), but vetoed), (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

Open Data Consortium project GIS Consultants

Opposing 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 6254.9 (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)

Open Data Consortium project

GIS Consultants

CA Supreme Court Hearing

May 7, 2013

A few excerpts:

- A Court Justice (CJ) asked Sierra Club (SCa) - When the Legislature has defined a term, that term replaces the word's "ordinary meaning," but here, the PRA does not define "software" nor "computer mapping system," so those terms' ordinary meaning remain, "is that the crux of your argument?" SCa - apparently wary that she was being invited to step into a trap answered vaguely, to which the CJ replied, "I'm trying to help you out here!"
- CJ - Do you agree that 49 [out of California's 58] counties are able to provide their GIS database according to the CPRA?
OCa - Yes.
CJ - Why can't Orange County afford to provide the data at the cost of duplication if 49 other counties can do so?
- CJ asked Orange County (OCa) - Are you saying that there are two kinds of public record, one being exempt?
OCa - Yes, but we are not withholding "the data," however "the system" costs us a lot of money ... 26% of the annual operating cost of \$781,000, which we receive from data sales, shouldn't burden our taxpayers.
CJ - Is it your position that the legislature intended to enable agencies to recoup their operational costs? [even though 6253.9 limits the cost to the "direct cost of producing a copy of a record in an electronic format."
OCa - Yes.
CJ - What does the \$781,000 pay for?
OCa - Computers, software, and ...
CJ - Aren't computers simply a fixed cost of doing business?
OCa - ... it pays for personnel to input the data.
CJ - Isn't this the same for any county department? Wouldn't the exemption that pertains to "computer programs" as well as "computer mapping systems" therefore exempt all county data where there is a cost to inputting new data, say into a Word program?

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
<u>Months_0</u> 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	- Trial 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
26 June 2011	- Court of Appeal decides in favor of Orange County
27 July 2011	- Sierra Club appeals to California Supreme Court
29 Sept 2011	- CA Supreme Court agrees to hear the case
31 Nov 2011	- Sierra Club's brief filed
32 Dec 2011	- OC's brief filed
34 Feb 2012	- Sierra Club's rebuttal brief
35 Mar 2012	- Amicus Briefs filed
49 May 2013	- Hearing before the CA Supreme Court

Open Data Consortium project GIS Consultants

Meanwhile, back in Santa Clara County

- **No new basemap data have been released since the April, 2009 version**
- **County claims it isn't maintaining nor distributing more current data**
 But, 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!**

Open Data Consortium project GIS Consultants

Are We Surfing the Public's GeoData ?



Or ...



If Counties Understood the Value of their Geodata, they wouldn't have to sell data to support geodata maintenance

Geospatial Data Sharing
Guidelines for Best Practices

NSGIC

Understanding the Return on Investment of GIS & Geodata

- 1 – Geospatial data returns more value to the agency than its cost.
- 2 – The more users = the more value accrued.
- 3 – Counties with data sharing policies have more economic development than counties with data selling policies.
- 4 – To support its GIS operations, an agency needs to:
 - o Track the costs saved
 - o Track the added revenue
 - o Allocate a portion of the ROI to GIS maintenance and operations

National States Geographic Information Council
www.NSGIC.org

Calculating Return On Investment of GIS & Geospatial Data

	Cost	ROI	Cost	ROI	Cost	ROI	Cost	ROI
GIS Applications/Tools								
Hardware/Software/Services	\$100K	\$100K	\$200K	\$200K	\$300K	\$300K	\$400K	\$400K
Personnel/Operations	\$50K	\$50K	\$100K	\$100K	\$150K	\$150K	\$200K	\$200K
Training/Support	\$20K	\$20K	\$40K	\$40K	\$60K	\$60K	\$80K	\$80K
GIS Data/Geospatial Data	\$10K	\$10K	\$20K	\$20K	\$30K	\$30K	\$40K	\$40K

Geospatial Data Sharing
Guidelines for Best Practices

NSGIC

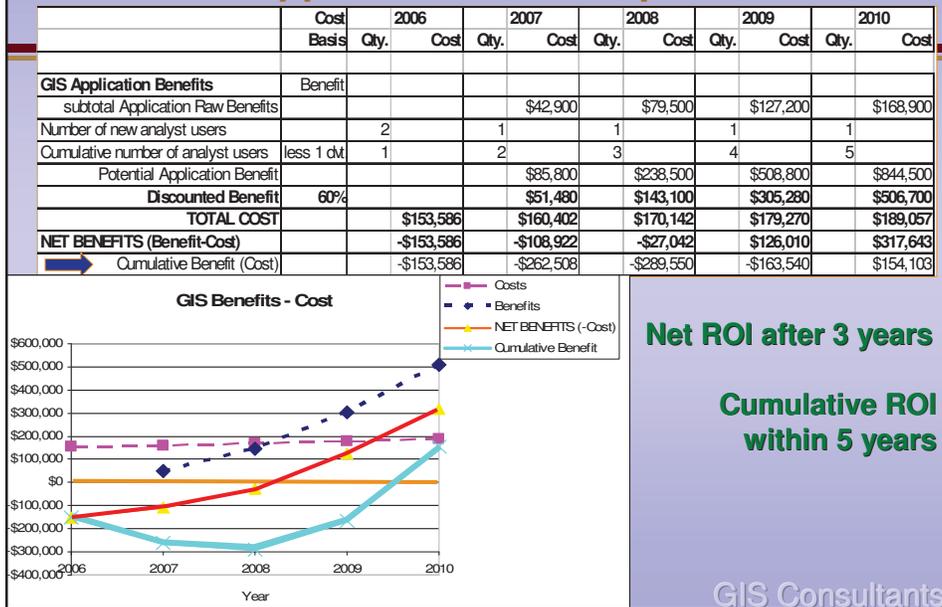
Understanding the Return on Investment of GIS & Geodata

- 1 – Geospatial data returns more value to the agency than its cost.
- 2 – The more users = the more value accrued.
- 3 – Counties with data sharing policies have more economic development than counties with data selling policies.
- 4 – To support its GIS operations, an agency needs to:
 - o Track the costs saved
 - o Track the added revenue
 - o Allocate a portion of the ROI to GIS maintenance and operations

National States Geographic Information Council
www.NSGIC.org

GIS Consultants

Calculating Return On Investment of GIS Applications & Geospatial Data



My Opinion

- 49 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."**
- GIS Professionals must be aware of and involved with public policy issues that they can affect and that affect our society

Teamwork = Participation

Open Data Consortium project

GIS Consultants

Teamwork = Participation

- **GIS Professionals must be aware of and involved with public policy issues that they can affect and that affect our society.**
 - We have special knowledge that can assist public policy.
 - Public Policy issues arise that affect our profession.
 - **Our participation in the public forum is necessary!** Both for us, and for our national, state, and local communities.

Open Data Consortium project

GIS Consultants

Good News ... from the White House ...

- **Executive Order 13642 -- Making Open and Machine Readable the New Default for Government Information**
<http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government>
Government information resources shall be **open and machine readable**. Government information shall be **managed as an asset** throughout its life cycle to promote interoperability and openness, and, wherever possible and legally permissible, to ensure that data are released to the public in ways that make the data **easy to find, accessible, and usable**.
- **OMB: Open Data Policy-Managing Information as an Asset**
<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf>

Open Data Consortium project

GIS Consultants

... but, Threats on the Horizon ...

HR 1604 – to establish a National Geospatial Technology Administration – "Map It Once, Use It Many Times act"

<http://www.govtrack.us/congress/bills/113/hr1604#>
Rep. Doug Lamborn [R-CO]

- **Section 103 (e) "Funding Strategy" -- (2) "the establishment of user fees for the National Geospatial Database"**
- In addition to the "fee for data" issue, there also is a good reason why different agencies order different mapping contracts for the same area: **differing requirements for accuracy, precision, imagery spectrum, LIDAR, SAR, and update timing.** How are all those to be reconciled with a "map once" requirement? Many apparent "duplications" are actually a response to different requirements.

Open Data Consortium project

GIS Consultants

In California's 2013 Budget: a close call SB 71

Friday, June 14 – CA Legislature passes budget On Time
(first time in over a decade).

- Also passed – several "trailer" bills with budgetary "adjustments" ...
... Including (buried within) ...
- Section 4 – would make CPRA **optional**. "Eliminates the requirement of existing law that agencies must make available 'electronic records' or 'information in any format in which the agency already holds them'."

Sunday, June 16 – First Amendment Coalition sends warning to its supporters

Monday, June 17 – GIS supporters of PRA receive call to action:
email the Governor to VETO SB 71

Wednesday, June 19 – Governor refuses, but at same time, newspapers all over California print VETO editorials and articles. Letters to Governor pouring in.

Thursday, June 20 – confusion – conflicting stories. Late in the day, Senate re-writes SB 71 without Section 4; Governor reverses policy and agrees to leave PRA legal requirements in tact.

**TAKE AWAY: Be Alert,
Stay Connected with reliable sources of information;
Act Quickly when the need arises**

Open Data Consortium project

GIS Consultants

... and in California (2012) ...

- **SB-1002 Public records: electronic format (Sen. Leland Yee)**
The State Chief Information Officer shall conduct a study to determine the feasibility of providing electronic records in an open format.
- **I am returning Senate Bill 1002 without my signature. [veto] (Gov. Jerry Brown)**
The role of the State Chief Information Officer is to make sure that state government uses information technology efficiently and effectively - including providing public records electronically when possible. Another legislative report on electronic public records isn't necessary.

Open Data Consortium project

GIS Consultants

TEAMWORK = Participation



Open Data Consortium project

GIS Consultants

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>
- General Information at <http://www.OpenDataConsortium.net>
- NSGIC Data Sharing Guidelines <http://www.nsgic.org/data-sharing-work-group>

Open Data Consortium project

GIS Consultants