S194708

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SIERRA CLUB,

Petitioner

vs.

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

Respondent.

COUNTY OF ORANGE,

Real Party in Interest.

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

CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS

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INTRODUCTION

This case centers on a narrow exemption to the Public Records Act's disclosure requirements for computer mapping systems. Government Code section 6254.9[1] exempts "computer software," which is defined in the statute to include computer mapping systems. After a two-day evidentiary hearing, the trial court found that the OC Landbase, which is in a GIS file format, is part of a computer mapping system. This factual finding was supported by substantial evidence. Accordingly, the courts below denied the Sierra Club's petition for writ of mandate based on Section 6254.9's computer mapping system exemption.

The legal arguments of the Sierra Club and its amicus curiae oscillate between two extremes, and in so doing, present this Court with a false dichotomy.[2] On the one hand, the amici embrace the Sierra Club's argument that Proposition 59 "changed the rules" and requires the application of "unique rules of statutory interpretation" in Public Records Act cases. (Reply Br. 6; CDIA 16.) Thus, despite the plain language and legislative history of Section 6254.9, the Sierra Club Amici insist that GIS

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

[2] The Sierra Club's Opening Brief is referred to herein as "OB." The County's Answer on the Merits is referred to herein as "Answer Br." The Sierra Club's Reply Brief on the Merits is referred to herein as "Reply Br." The Academic Researchers in Public Health brief is referred to herein as "ARPH Br." The Advocates for the Environment brief is referred to herein as "AE Br." The California Assessors Association brief is referred to herein as "CAA Br." Jack Cohen's brief is referred to herein as "Cohen Br." The Consumer Data Industry Association brief is referred to herein as "CDIA Br." The Electronic Freedom Frontier brief is referred to herein as "EFF Br." The 212 GIS Professionals brief is referred to herein as "GIS Pro Br." The League of California Cities and California State Association of Counties brief is referred to herein as "LOC Br." The Media and Open Government brief is referred to herein as "MOG Br."

file formatted data, which is an integral part of a computer mapping system, does not fall within the scope of the computer mapping system exemption.

On the other hand, the Sierra Club Amici insist that recognition of the computer mapping system exemption will require this Court to broadly construe Section 6254.9 to exclude a broad range of non-GIS file formatted records, including documents in a Microsoft Word or Adobe pdf formats. Of course, Real Party in Interest County of Orange ("County") has never advocated such an expansive interpretation of Section 6254.9. In fact, the County repeatedly offered to produce non-GIS file formatted records to the Sierra Club, which contained the same data stored in the OC Landbase. The Sierra Club Amici's efforts to create a slippery slope are undermined by their own arguments regarding the narrow construction of exemptions.

Apart from the legal interpretation of Section 6254.9, the Sierra Club Amici contend as a matter of policy that data in a GIS file format should be distributed for free at taxpayer expense, instead of requiring users like amicus curiae LexisNexis to bear some of the costs of maintaining computer mapping systems. These policy arguments ignore the plain language and legislative history of Section 6254.9, which demonstrates that the statute was designed to allow public agencies to recoup the costs of computer mapping systems by allowing them to "sell, lease, or license" such systems "for commercial or noncommercial use." To the extent that the Sierra Club Amici disagree and insist that the taxpayers should subsidize their use of such systems, they should present such arguments to the Legislature, rather than this Court.

The inconsistency and internal contradictions of the Sierra Club Amici's arguments merely confirm that the Court of Appeal got it right. The decision should be affirmed accordingly.

ARGUMENT

I. THE SIERRA CLUB AMICI IMPROPERLY RELY ON EVIDENCE OUTSIDE OF THE RECORD AS THE BASIS OF THEIR LEGAL ARGUMENTS

A. The Sierra Club Did Not Challenge The Sufficiency of Evidence Supporting The Trial Court's Decision, Thus Sierra Club Amici Cannot Raise New Issues and Evidence Attacking The Trial Court's Factual Findings

"As a general rule, issues not raised by the appealing parties may not be considered if raised for the first time by amici curiae." (*Mercury Casualty Co. v. Hertz Corp.* (1997) 59 Cal.App.4th 414, 425.) Likewise, amicus curiae "may not 'launch out upon a juridical expedition of its own unrelated to the actual appellate record.'" (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1047, fn. 12.) Where an appellant fails to preserve an issue ruled on in the trial court by failing to raise it in its appellate brief, the issue is waived and amicus curiae cannot remedy this defect because amici curiae are not allowed to expand the issues raised by the parties. (*Pan Asia Venture Capital Corp. v. Hearst Corp.* (1999) 74 Cal.App.4th 424, 429, fn. 4.) Indeed, as a matter of policy, this Court normally does not consider any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal. (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 591.)

Here, the trial court found as a threshold evidentiary matter that the OC Landbase data, which is in a GIS file format, is part of a computer mapping system.[3] (5 PA 1348-1349.) As noted in the County's Answer

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[3] The trial court received substantial evidence that a "geographic information system" or "GIS" refers to an integrated collection of both software *and* data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes. (RT 109-112, 133-134, 193-198; 5 PA 1306-1307, 1317, 1349; 1 RPA 75-76; 2 RPA 119-121.) The trial court also received substantial evidence that "computer

brief (at pp. 6-7), the Sierra Club itself presented the question of what is the nature of the OC Landbase, and whether it is part of a computer mapping system, as a fact dispute to be resolved by the trial court.[4] The trial court's decision was based on both stipulated facts and the trial court's findings following oral argument, extensive briefing with declarations and exhibits, and a two-day evidentiary hearing in which the parties presented oral testimony of witnesses. (Slip Op., pp. 3-5; 5 PA 1348-1351.) These findings are set forth in the trial court's written Statement of Decision and were subsequently referenced by the Court of Appeal in its opinion.[5] (Slip. Op., pp. 3-5; 5 PA 1348-1351.) The Sierra Club did not argue in the Court of Appeal that the trial court's factual findings were not supported by

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mapping system" is another term used for "geographic information systems." (RT 104, 107-108, 118-119, 198-200; 3 PA 527-529, 532; 4 PA 789-791; 5 PA 1349; 2 RPA 119-121.) Thus, the trial court's factual finding that the OC Landbase data (in a GIS file format) is part of a computer mapping system, is based on substantial evidence. (RT 200; 4 PA 789-791; 5 PA 1083, 1348-1349; 2 RPA 119-121.)

[4] The Sierra Club rejected proposals at the trial level to resolve this matter on the papers. (2 RT 298-300, 307-308, 315-316, 318, 321-322.) The Sierra Club insisted on presenting oral testimony on "the nature of a GIS system" at an evidentiary hearing. (2 RT 322.)

[5] This Court "normally will accept the Court of Appeal opinion's statement of the issues and facts unless [a] party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing." (Cal. Rules of Court, rule 8.500(c)(2); see *People v. Anderson* (2010) 50 Cal.4th 19, 23 ["Although defendant petitioned for rehearing, he did not do so on the basis of any factual omission or misstatement"].) A petition for rehearing is normally a prerequisite to this Court's consideration of an alleged omission or misstatement of issues or facts by the Court of Appeal. (See *People v. Ramirez* (2009) 45 Cal.4th 980, 983.) The Sierra Club did not file a petition for a rehearing alleging an omission or misstatement of facts. The fact that the Sierra Club did not file such a petition provides yet another basis for disregarding the Sierra Club Amici's efforts to contradict the material facts set forth in the trial court's Statement of Decision and the Court of Appeal opinion.

substantial evidence.[6] (Slip. Op., *passim.*) Thus, any substantial evidence attack on the trial court's factual finding that the OC Landbase data, which is in a GIS file format, is part of a computer mapping system has long since been waived by the Sierra Club.

Instead, the Sierra Club asserts, "[i]n this case, the question is whether, as a matter of law, "computer mapping system" [as used in Section 6254.9] refers to mapping software and not the mapping data the software processes." (Reply Br. 4 [emphasis added].) Notwithstanding the plain language of Section 6254.9, subdivision (b), the Sierra Club expressly asks this Court to interpret subdivision (b) as a definition of computer mapping systems, rather than "computer software": "[W]hat is at issue in this case is a statutory definition of computer mapping system, which is purely a question of law, not a fact-based inquiry." (Reply Br. 4.) Under the Sierra Club's theory of the case on appeal, subdivision (b) is entirely superfluous, because "computer mapping system" as used in Section 6254.9 is defined to mean software as defined in a dictionary. Thus, the Sierra Club seeks to render irrelevant the trial court's factual finding that the OC Landbase is part of a computer mapping system.

Sierra Club Amici ignore the fact that the Sierra Club is not challenging the sufficiency of the evidence supporting the trial court's factual findings. Some amici suggest that the trial court and the Court of

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[6] In its Reply Brief, the Sierra Club claimed in passing that the trial court only based its findings on the testimony of the County's witness, Robert Jelinek. (Reply Br. 4-5.) This claim is contradicted by the trial court's Statement of Decision, which repeatedly cites to evidence and testimony introduced by the Sierra Club. (5 PA 1348-1351.) Indeed, the Court of Appeal's opinion specifically refers to the testimony of the Sierra Club's expert witness, Bruce Joffe, on cross-examination, which supported the factual findings of the trial court. (Slip Op., p. 5.)

Appeal simply did not understand the technical difference between data and software. (ARPH Br. 14-21; AE Br. 32; GIS Pro. Br. 36-39.) Instead of accepting the facts as framed by the trial court and the Court of Appeal, the Sierra Club Amici rely on lengthy alternative factual and technical backgrounds that are based on material outside of the record, including illustrations and photos that were never presented to the trial court. (See, e.g., AE Br. 3-25; ARPH Br. 5-21; CDIA Br. 23-28; GIS Pro. Br. 7-17, 36-39.) Indeed, the AE brief goes so far as to contradict the Sierra Club's efforts to frame this case as a purely legal question with its claim that "[a]t the heart of this dispute is a fundamental misapprehension about the nature of 'geographic information systems.'" (AE Br. 3.)

The Sierra Club Amici's factual and technical backgrounds often conflict with each other. The AE and MOG briefs describe GIS as a "technology." (AE Br. 3-4; MOG Br. 10.) The ARPH brief describes GIS as a "very broad term," then devotes several pages to anecdotes regarding the author's use of various computer programs that are not in evidence or at issue in this case. (ARPH Br. 14-21.) The CDIA, Cohen and GIS Pro briefs describe a GIS as a type of database, though the GIS Pro brief also says that GIS may refer to a "technology," as well as both the data and software that comprise such a system. (Cohen Br. 2; CDIA Br. 24; GIS Pro. Br. 4, 8 and 12.)

The GIS Pro brief is particularly notable because it is co-authored and co-signed by the Sierra Club's expert witnesses in the trial court below: Bruce Joffe and Amanda Recinos. (GIS Pro Br. 1-2, Appendix A; RT 42-158.) In the brief, Mr. Joffe attempts to impeach his own testimony on cross-examination where he admitted that he had defined geographical information systems as "the collection of computers, software, databases,

and data that enable geospatial data to be received, manipulated, and distributed," and that this description reflected the "consensus view" among GIS professionals.[7] (RT 110-112, 129-130, 133-34; 5 PA 1317; 1 RPA 76.) Thus, the GIS Pro brief attempts to collaterally attack factual findings by the trial court that are based in large part on the testimony of the brief's authors.

In short, the Sierra Club not only waived any substantial evidence argument, but the conflicting outside materials tendered by the Sierra Club Amici fall far short of demonstrating that there is insufficient evidence to support the trial court's findings. (See *Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660 ["Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that ... the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below"].) Accordingly, this Court should disregard the fact statements on which the Sierra Club Amici base their legal arguments, which contradict the factual findings of the trial court below.

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[7] In addition to supporting the trial court's factual finding that "'GIS' refers to 'an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships and model spatial processes,'" Mr. Joffe's testimony on cross-examination was consistent with the Sierra Club's discovery responses, which the County cited in its briefing to the trial court. (4 PA 828, 842.) Specifically, the County noted that the Sierra Club's own GIS treatises described GIS as a collection of both software and data. (*Ibid.*)

B. The Sierra Club Amici Improperly Rely On Material That Is Not In The Record To Challenge The Trial Court's Factual Finding That The OC Landbase Is Part of A Computer Mapping System

Statements of alleged fact in appellate briefs, which are not contained in the record and were never called to the attention of the trial court, are generally disregarded by appellate courts. (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) "As a general rule, documents not before the trial court cannot be included as a part of the record on appeal." (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184.) Likewise, "[s]tatements of counsel in briefs are not part of the record on appeal." (*Gantner v. Gantner* (1952) 39 Cal.2d 272, 278.) In *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, this Court stated:

> We ... share plaintiff Bily's concerns about the reliability and relevance of the information supplied by [amicus]. The declarations and data in its Appendix consist of surveys and opinions directly generated by interested parties engaged in lobbying activities in the area of auditor liability. They are not part of the record, were not subjected to the testing mechanisms of the adversary process or independent professional review, and do not quality for judicial notice pursuant to *Evidence Code section 450 et seq.* Moreover, they pertain to matters irrelevant to the legal rules and standards we consider in this case.

(*Id.* at p. 405, fn. 14 [citations omitted].) Thus, this Court declined to consider an amicus curiae's submission of declarations from accounting and insurance industry personnel incorporating the results of industry surveys. (*Ibid.*)

Here, as in *Bily,* many of the Sierra Club Amici rely on material that is not in the record. (See AE Br. 3-8; ARPH Br. 5-21; CDIA Br. 23-28; GIS Pro. Br. 7-20, 36-39.) The Sierra Club Amici's reliance on outside facts is particularly egregious given that the Sierra Club is trying to posture this case as a pure question of law to avoid the trial court's factual findings,

which are based in large part on evidence that the Sierra Club itself introduced. (Reply Br. 4.) The ARPH and GIS Pro briefs repeatedly refer to Internet websites, technical journals, letters, and factual assertions that are neither based on the record below nor judicially noticeable. (ARPH Br. 5-12; GIS Pro. Br. 7-20, 36-39.) Similarly, the MOG brief contains demonstrative illustrations that are not part of the record below and refers to alleged uses of GIS that are not judicially noticeable. (MOG Br. 11-13.) Finally, the CDIA brief includes photos and illustrations that were never judicially noticed, as well as a particularly inflammatory reference to a map that depicts the locations of sex offenders within a five-mile radius of the Fourth Appellate District Court of Appeal, Division Three. (CDIA Br. 24-28.)

The Sierra Club Amici's references to documents and facts that are not in the record are improper and should be ignored by this Court. (See *In re Hochberg* (1970) 2 Cal.3d 870, 875 [it is elementary that the function of an appellate court, in reviewing a trial court judgment on direct appeal, is limited to a consideration of matters contained in the record of trial proceedings, and that matters not presented by the record cannot be considered on the suggestion of counsel in the briefs].) Indeed, the Sierra Club Amici's heavy reliance on material outside of the record only serves to undercut the Sierra Club's efforts to minimize the importance of the trial court's factual finding that the "OC Landbase data, which is in a GIS file format, constitutes part of a computer mapping system." (5 PA 1349.)

II. PROPOSITION 59 DOES NOT REQUIRE COURTS TO DISREGARD THE INTENT OF THE LEGISLATURE AS EXPRESSED IN THE PLAIN LANGUAGE OF SECTION 6254.9

"The general principles that govern interpretation of a statute enacted by the Legislature apply also to an initiative measure enacted by the voters." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 978.) This Court looks "first to the words of the initiative measure, as they generally provide the most reliable indicator of the voters' intent." (*Id.* at p. 979.) "Usually, there is no need to construe a provision's words when they are clear and unambiguous and thus not reasonably susceptible of more than one meaning." (*Ibid.*) Indeed, as this Court explained, "[f]or a court to construe an initiative statute to have substantial unintended consequences strengthens neither the initiative power nor the democratic process; the initiative power is strongest when courts give effect to the voters' formally expressed intent, without speculating about how they might have felt concerning subjects on which they were not asked to vote." (*Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 930.)

Here, as explained below, the Sierra Club and its amici advance two lines of argument regarding Proposition 59. First, they assert contrary to well established law that by codifying common law rules regarding the construction of the Public Records Act, Proposition 59 alters the accepted meaning of such rules by virtue of the fact that the rule has taken on "constitutional stature." (See, e.g., Reply Br. 8; CDIA Br. 19-20.) Second, the Sierra Club Amici argue that Proposition 59 changes this Court's fundamental duty in interpreting statute from ascertaining the intent of the Legislature to compelling disclosure notwithstanding such intent if the requester claims that an exemption is ambiguous. (See, e.g., Reply Br. 7;

AE Br. 30; ARPH Br. 37-40; CDIA Br. 12-16; EFF Br. 16; MOG Br. 15-16.)

The fact that Proposition 59 codified the pre-existing California common law rule that disclosure is "broadly construed" and exemptions to disclosure are "narrowly construed" demonstrates that California courts are more than adequately equipped to interpret the Public Records Act. There is no need to adopt entirely new rules of statutory interpretation to protect such rights. Indeed, the Sierra Club Amici's strenuous advocacy in support of the adoption of such new rules confirms that the Sierra Club's effort to construe Section 6254.9's computer mapping system exemption out of existence fails under existing rules of statutory interpretation.

A. Proposition 59 Codified Existing Common Law Rules Requiring Courts To Interpret Disclosure Statutes Broadly and Exemptions Narrowly

There is a presumption that a statute does not, by implication, repeal the common law. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297.) This Court recently explained:

> As a general rule, unless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules. A statute will be construed in light of common law decisions, unless its language clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter. Accordingly, there is a presumption that a statute does not, by implication, repeal the common law. Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws.

(*People v. Ceja* (2010) 49 Cal.4th 1, 10, internal cites omitted [Court found that codification of common law rule did not change it].) Moreover, if a term known to the common law has not otherwise been defined by statute,

it is assumed that the common law meaning was intended." (*Ibid;* see *People v. Tufunga* (1999) 21 Cal.4th 935, 946 ["[B]y adopting the identical phrase 'felonious taking' as used in the common law with regard to both offenses, the Legislature in all likelihood intended to incorporate the same meanings attached to those phrases at common law"].)

Here, contrary to the arguments of the Sierra Club Amici, Proposition 59's codification of common law rules regarding the narrow construction of exemptions to disclosure does not operate to alter such rules. Proposition 59 was adopted in 2004. It states that a "statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the peoples right of access, and narrowly construed if it limits the right of access." (Cal. Const., art I, § 3(b)(2).) Proposition 59 also states that it "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision ..." (Cal. Const., art I, § 3(b)(5) [emphasis added].)

In its Answer brief (at pp. 42-43), the County explained how Proposition 59 codified the existing common law rule that exceptions to California Public Records Act's general requirement of disclosure must be narrowly construed. (See *Sutter's Place Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370, 1382 ["Proposition 59 manifests an intent to affirm rather than change existing law"]; *Shapiro v. Board of Directors of Centre City Development Corp.* (2005) 134 Cal.App.4th 170, 181, fn. 14 ["even if the language added by Proposition 59 did apply, it would merely be duplicative of the already-established principle that exceptions to the Brown Act are to be narrowly construed ..., and thus it would not

substantively add to the principles guiding our analysis"].) As originally enacted, the Public Records Act did not direct "broad interpretation of some provisions or narrow interpretation of others." (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653.) However, California courts articulated the common law rule that exemptions to disclosure must be narrowly construed prior to the codification of this rule through Proposition 59. (See *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 773 [general policy of disclosure that "can only be accomplished by narrow construction of the statutory exemptions"]; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 342 [California courts have construed the statutory exemptions narrowly in order to accomplish the general policy of disclosure].) Indeed, several of the Sierra Club Amici reiterate the point that California courts had long applied the rule of narrow construction of exemptions to disclosure prior to the adoption of Proposition 59. (See AR Br. 33; MOB Br. 15.) Proposition 59, therefore, merely codified the existing common law rule that exemptions to disclosure must be "narrowly construed" in the California Constitution. (Cal. Const., art I, § 3(b)(2).)

Nonetheless, the Sierra Club Amici assert that Proposition 59 "changed the rules" and requires California courts to construe exemptions differently and even more narrowly than they had in the past. (CDIA 16, 19-20; see also Reply Br. 6-8, 10-11; EFF Br. 15-19; MOG Br. 23.) These arguments fail to address the fact that Proposition 59 uses identical "narrowly construed" language to that expressed in case law that preceded its adoption. (See *People v. Lopez* (2003) 31 Cal.4th 1051, 1060 [if a term known to the common law has not otherwise been defined by statute, it is assumed that the common law meaning was intended]; *People v. Newby* (2008) 167 Cal.App.4th 1341, 1346-47 [where the Legislature uses a term

well-understood by the common law, we must presume that the Legislature intended the common law meaning].) If Proposition 59 was intended to change the existing common law rule that exemptions to disclosure must be "narrowly construed," then it would have contained different language, rather than language identical to existing case law. Thus, rather than change case law holding that exemptions to disclosure must be "narrowly construed," Proposition 59 codified these rules in the Constitution, which actually operates to prevent California courts from altering these rules.

B. Proposition 59 Does Not Change This Court's Fundamental Duty To Ascertain The Intent of the Legislature When It Interprets a Statute

Even in cases arising under the Public Records Act, this Court has long held that its "primary task in construing a statute is to determine the Legislature's intent, and '[t]he statutory language, of course, is the best indicator of legislative intent.'" (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 350.) "If more than one reasonable construction of the statutory language is possible, then [this Court] should look at the legislative history and other extrinsic aids to determine the legislative purpose and adopt the construction which most closely serves it." (*County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 594-95 [court considered legislative history of exemption to disclosure].) Thus, California courts have considered the legislative history of exemptions to disclosure under the Public Records Act as an aid in determining the Legislature's intent so as to effectuate the purpose of the exemption. (See, e.g., *Commission On Peace Officer Standards And Training v. Superior Court* (2007) 42 Cal.4th 278, 292 [this Court considered the legislative history of exemption to disclosure]; *Long Beach Police Officers Assn. v.*

City of Long Beach (2012) 203 Cal.App.4th 292 [court considered legislative history of exemption to disclosure]; *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 447 [same]; *Masonite Corp. v. County of Mendocino Air Quality Management Dist.* (1996) 42 Cal.App.4th 436, 444 [same].)

This Court has also held that the "rule of liberal construction . . . should not blindly be followed so as to eradicate the clear language and purpose of the statute." (*Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605.) "[A] command that a constitutional provision or a statute be liberally construed 'does not license either enlargement or restriction of its evident meaning.'" (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 844; see also *O'Connor v. State Teachers' Retirement System* (1996) 43 Cal.App.4th 1610, 1620-21 [same].) Thus, "[a] mandate to construe a statute liberally in light of its underlying remedial purpose does not mean that courts can impose on the statute a construction not reasonably supported by the statutory language." (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 645.)

Here, the Sierra Club and its amici argue that Proposition 59 requires courts to automatically accept a requester's interpretation of an exemption when a dispute in the interpretation of the exemption arises due to an alleged ambiguity. (Reply Br. 7; AE Br. 30-32; ARPH Br. 37-40; CDIA Br. 12-16; EFF Br. 16, 18-22; MOG Br. 15-16, 23.) The Sierra Club states that "the Constitution is the ultimate tie-breaker; if there is any question as to the statute's interpretation, then the Constitution definitively answers it, and a court is to err on the side of disclosure..." (Reply Br. 7.) The CDIA brief expands on this argument and insists that Proposition 59 "renders

reliance on the legislative history inappropriate."[8] (CDIA Br. 12.) Indeed, the CDIA brief illustrates the radical nature of the interpretive rules that the Sierra Club and its Amici are urging this Court to adopt. (CDIA Br. 12-16.) The CDIA amicus complain about "[t]he ambiguity of language as a communicative tool," and notes how, in their experience, "legislative bodies often use less than clear language as a means of political compromise, leaving interested parties to fight out the differences in the courts after enactment."[9] (*Ibid.*) Thus, the CDIA brief denigrates the judicial investigation of legislative history as a means of ascertaining legislative intent as "an exercise in looking over a crowd and picking out your friends." (*Id.* at p. 13.)

This Court has already rejected post-Proposition 59 arguments similar to those raised by the Sierra Club Amici. In *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, this Court considered a Public Records Act request for the records of a county commission relating to a peace officer's administrative appeal of a disciplinary matter. Contrary to the arguments raised by the Sierra Club Amici, this Court held:

To the extent this examination of the statutory language

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[8] Likewise, the MOG brief cites *South Coast Newspapers v. City of Oceanside* (1984) 160 Cal.App.3d 261 in support of the argument that alleged ambiguities in exemption must automatically be resolved in favor of access. (MOG Br. 15, 23.) However, this Court disapproved of *South Coast* in *Williams v. Superior Court* (1993) 5 Cal.4th 337, 351 [*South Coast* "misinterpreted controlling authority"]. Indeed, in *Williams*, this Court took note of the legislative history of Section 6254, subdivision (f), when it rejected a requester's argument that the exemption for law enforcement investigatory files ends when the investigation ends. (*Id.* at p. 355.)

[9] Similarly, the EFF brief suggests that this Court decline to enforce the statutory definition set forth in Section 6254.9, subdivision (b), given "the difficulties inherent in accurately describing technology." (EFF Br. 21.)

> leaves uncertainty, it is appropriate to consider "the consequences that will flow from a particular interpretation." [Citation.] Where more than one statutory construction is arguably possible, our "policy has long been to favor the construction that leads to the more reasonable result." [Citation.] This policy derives largely from the presumption that the Legislature intends reasonable results consistent with its apparent purpose. [Citation.] Thus, our task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results. [Citation.] We will not adopt "[a] narrow or restricted meaning" of statutory language "if it would result in an evasion of the evident purpose of [a statute], when a permissible, but broader, meaning would prevent the evasion and carry out that purpose." [Citation.]

(*Copley Press, Inc. v. Superior Court, supra,* 39 Cal.4th at pp. 1291-92.) Thus, after finding a requester's proposed interpretation of an exemption to be "neither reasonable nor consistent with the Legislature's intent," this Court found that the records sought were exempt from disclosure. (*Id.* at p. 1279.)

The Sierra Club Amici's heavy reliance on, and advocacy of, "unique rules of statutory interpretation" confirms that their proposed interpretation of Section 6254.9 fails under existing rules of statutory construction. Proposition 59 "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision ..." (Cal. Const., art I, § 3(b)(5) [emphasis added].) Under the "unique rules of statutory interpretation" advocated by the Sierra Club and its amici, it is difficult to imagine any exemption that would not be construed out of existence. (See, e.g., Reply Br. 6; CDIA Br. 12.) A party seeking disclosure would merely have to assert that an exemption is ambiguous, and then claim that Proposition 59 mandates that a court automatically adopt the requester's proposed

interpretation notwithstanding the Legislature's intent. Such a result conflicts with the plain language of Proposition 59 and this Court's prior decisions in which it remained faithful to the intent of the Legislature in adopting exemptions to the general rule of disclosure.

III. THE COUNTY'S OC LANDBASE, WHICH IS PART OF COMPUTER MAPPING SYSTEM, IS EXEMPT UNDER SECTION 6254.9

A. Computer Mapping Systems Are Exempt Under Section 6254.9

The Sierra Club Amici advance two primary arguments with respect to the operative language of Section 6254.9, which mirror those made by the Sierra Club.

First, the Sierra Club Amici insist, "[b]y its plain language, § 6254.9 excludes only computer software – including computer mapping software – from the universe of public records." (MOG Br. 17; see also OB 13-17; AE Br. 31-33.) As explained in the County's Answer Brief (at pp. 10-15) and below, this argument ignores the plain language of subdivision (b), which statutorily defines "computer software" as used in Section 6254.9 to include computer mapping systems.

Second, to the extent they address subdivision (b), the Sierra Club Amici omit "computer mapping system," insert the term "computer mapping software," then base their arguments on this fictional language. (See MOG Br. 16-17; Cohen Br. 8.) However, as explained in the County's Answer brief (at pp. 10-17) and below, this argument either: (1) inverts the plain meaning of subdivision (b) into a statutory definition of "computer mapping system" rather than "computer software" or (2) renders subdivision (b) entirely superfluous.

1. The Plain Statutory Language and Legislative History Of Section 6254.9 Demonstrates That "Computer Software" Is Defined To Include Computer Mapping Systems

Section 6254.9, subdivision (a), provides "[c]omputer 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." Subdivision (b) provides "[a]s used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems." (Gov. Code, § 6254.9(b).) Thus, computer mapping systems are exempt from disclosure under Section 6254.9, because "computer software," as used in this section, has been statutorily defined to include computer mapping systems.[10] (See *People v. Canty* (2004) 32 Cal.4th 1266, 1277 [if the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts].)

Here, as explained in the County's Answer Brief (at pp. 3-8), the trial court found that "[t]he OC Landbase data, which is in a GIS file format, constitutes a part of a computer mapping system." (5 PA 1349.) This factual finding followed extensive briefing and an evidentiary hearing and was based in large part on evidence introduced by the Sierra Club. (*Ibid.*) Thus, the OC Landbase data (in a GIS file format) falls within Section 6254.9's exemption for computer mapping systems.

Like the Sierra Club, the Sierra Club Amici spend significant effort

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[10] As explained in the County's Answer brief (at pp. 29, 31, 33-35), the legislative history demonstrates that the Legislature was repeatedly informed that the exemption they were enacting applied to "computer software" as defined therein. Thus, in addition to the plain language of Section 6254.9, the legislative history leaves no doubt that the Legislature intended to statutorily define exempt "computer software."

knocking down straw men by arguing that the OC Landbase does not constitute software as defined in a dictionary. (See OB 13-17; AE Br. 31-33; MOG Br. 16.) Indeed, the ARPH brief devotes seven pages to arguments suggesting that even with the assistance of expert testimony, neither the trial court nor the Court of Appeal properly understood the difference between computer software (as defined in a dictionary) and data. (ARPH Br. 14-21.) However, these arguments ignore the plain language of Section 6254.9 and the substance of the County's arguments.

The County has never asserted that the OC Landbase constitutes "software" as defined in the various dictionaries cited by the Sierra Club or its amici. Instead, the County presented evidence at an evidentiary hearing before the trial court that the OC Landbase data, which is in a GIS file format, constitutes part of a computer mapping system. (5 PA 1349.) After carefully considering the evidence provided by both the County and the Sierra Club, the trial court factually determined that "[t]he OC Landbase data, which is in a GIS file format, constitutes a part of a computer mapping system." (5 PA 1349.) The Sierra Club never disputed that this finding is supported by substantial evidence. Thus, based on these facts, the County's legal position is that the OC Landbase falls within the plain language of Section 6254.9's exemption for computer mapping systems.

2. The Sierra Club Amici's Proposed Construction of Subdivision (b) Renders It Entirely Circular and Superfluous

The Code of Civil Procedure mandates that "[i]n the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are

several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858; see also *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357 [It is not the province of courts to insert what has been omitted].) Thus, even in cases arising under the Public Records Act, this Court has cautioned that "[a] court should not lightly adopt an interpretation of statutory language that renders the language useless in many of the cases it was intended to govern." (*Williams v. Superior Court*, *supra,* 5 Cal.4th at p. 354.)

Here, Section 6254.9, subdivision (b) provides "[a]s used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems." (Gov. Code, § 6254.9(b).) Yet, like the Sierra Club, the ARPH, MOG and Cohen briefs expressly omit "computer mapping systems" from Section 6254.9 and insert the words "mapping software" or "mapping programs." (OB 31-33; Reply Br. 4; ARPH Br. 23; Cohen Br. 8; MOG Br. 16-17.) By expressly replacing the word "system" with either "software" or "programs," the Sierra Club and its amici implicitly admit that the word "system" is not synonymous with either word. Instead, as explained in the County's Answer brief (at p. 25), "system" was typically defined back in 1988 as "a group of interacting, integrated, or interdependent elements forming a complex whole."[11] (American Heritage Dict. (2d college ed. 1982) p. 1234.) Thus, the plain language definition of "system" is consistent with the evidence provided to the trial court that computer mapping systems are an integrated collection of computer software and data used to view and

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

manage information about geographical places, analyze spatial relationships and model spatial processes. (5 PA 1349.)

Moreover, interpreting subdivision (b) to merely provide non-binding examples of computer software as advocated by the Sierra Club Amici would render subdivision (b) entirely superfluous. [12] (ARPH Br. 3, 22, fn. 24; GIS Pro. Br. 6-7; MOG Br. 20, fn. 8.) If this Court were to adopt the Sierra Club's proposed rule of "parallel construction" in which the express definition of a term is construed as meaning the same thing as the term itself, then it is difficult to imagine any statutory definition that would not be rendered entirely superfluous. (See OB 21-22; Reply Br. 17.) Such a result would conflict with the long standing rule that "[i]f the Legislature has provided an express definition of a term, that definition ordinarily is binding on the courts." (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) Courts would be free to disregard the definitions provided by the Legislature under the rule advocated by the Sierra Club Amici. Accordingly, this Court should decline the Sierra Club Amici's

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[12] The Sierra Club Amici provide no authority to support their proposed interpretation of subdivision (b) as providing a list of examples of software. The Sierra Club itself only cited this Court's decision in *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1011, in which this Court interpreted Section 5058 of the Business and Professions Code. (OB 21-22; Reply Br. 17.) However, that section provided in relevant part: "No person or partnership shall assume or use the title or designation 'chartered accountant,' 'certified accountant,' 'enrolled accountant,' 'registered accountant' or 'licensed accountant,' or any other title or designation likely to be confused with 'certified public accountant' or 'public accountant,' or any of the abbreviations 'C.A.,' 'E.A.,' 'R.A.,' or 'L.A.,' or similar abbreviations likely to be confused with 'C.P.A.' or 'P.A.' ..." (*Moore v. California State Bd. of Accountancy*, *supra*, 2 Cal.4th at p. 1011.) Thus, *Moore* is inapplicable to this case because this Court was not interpreting a statutory definition similar to Section 6254.9, subdivision (b).

invitation to ignore the plain language of subdivision (b) of Section 6254.9, which defines "computer software," as used in the section to include computer mapping systems.

B. Proposition 59's Rule of Narrow Interpretation of Exemptions Undercuts the Sierra Club Amici's Slippery Slope Arguments Regarding Subdivision (b)'s Reference To Computer Graphic Systems

As explained above and in the County's Answer (at pp. 42-43), Proposition 59 codified the longstanding common law rule that exceptions to the Public Records Act's general requirement of disclosure must be narrowly construed. Indeed, the Sierra Club Amici themselves repeatedly rely on this rule. Nonetheless, the Sierra Club Amici disregard this rule in making slippery slope arguments based on subdivision (b)'s reference to "computer graphics systems." (AE Br. 48; CDIA Br. 29-33; EFF Br. 12; MOG Br. 38.)

The Sierra Club Amici contend that if this Court were to give operative effect to subdivision (b)'s definition of "computer software" as including computer mapping systems, then subdivision (b)'s reference to computer graphics systems would necessarily render any type of computer generated or stored information exempt from disclosure.[13] (AE Br. 48; CDIA Br. 6, 29-33; EFF Br. 12; MOG Br. 38.) However, this argument

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[13] Several of the Sierra Club Amici offer a series of hyperbolic and speculative claims of "adverse world consequences" in the event they do not prevail. The EEF brief insists that the "gradual evisceration of the CPRA in the digital age" will follow if this Court were to recognize the computer mapping system exemption found in Section 6254.9. (EFF Br. 13.) The CDIA brief warns of "adverse world consequences for public record aggregators and their customers" if this Court were to recognize the County's ability to license its OC Landbase in a GIS file format. (CDIA Br. 21.)

ignores the legislative intent of Section 6254.9. As explained in the County's Answer (at pp. 29-37), which reviewed the legislative history of Section 6254.9, the term "computer graphics systems" referred to a computer mapping system:

> The City of San Jose, like many other government agencies has developed various computer readable data bases, computer programs, *computer graphics systems* and *other computer stored information at considerable research and development expense*. For example, the City's Department of Public Works has recently completed development of a database for a *computer mapping system* known as the Automated Mapping System (AMS).

(Pet.RJN., Ex. 4, p. PA 986; 4 PA 986 [emphasis added].) The Legislature subsequently analyzed Section 6254.9 in reference to San Jose's needs:

> The City of San Jose, the sponsor of the bill, has developed various computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes.

(Pet.RJN., Ex. 4, p. PA 955; Assem. Comm. On Gov. Org., Analysis of AB 3265 (1987-1988 Reg. Sess.) as proposed to be amended April 4, 1988 [emphasis added].) The rule of narrow construction easily straightens the slippery slope created by the Sierra Club Amici. The intent of the Legislature in adopting Section 6254.9 was to protect computer mapping systems (like the one developed by the City of San Jose) from disclosure. (Answer Br. 29-37.) By effectuating this intent and observing the well established rule of narrow construction, courts can easily avoid an overly broad construction of Section 6254.9.

C. Subdivision (d) Undercuts The Sierra Club Amici's Argument That Entering Information Into A Computer Mapping System Would Exempt Non-GIS Formatted Records Containing The Same Information

As the County explained in its Answer brief (at pp. 17-20), Section 6254.9's computer mapping system exemption only limits disclosure of

data in a format usable by a computer mapping system. Indeed, Section 6254.9, subdivision (d), provides:

> 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.

Thus, the fact that information may be stored in a computer mapping system, which is exempt under Section 6254.9, does not affect the public record status of non-GIS formatted records containing the same information.

In an effort to knock down yet another straw man, the Sierra Club Amici argue that recognizing Section 6254.9's computer mapping system exemption would require the non-disclosure of even non-GIS file formatted records. (See AE Br. 48; ARPH Br. 14; CDIA Br. 28; EFF Br. 13; MOG Br. 38.) These arguments conflate information and records that may contain the information. For example, the AE brief argues that "if data that can be read by a 'computer mapping system' is never subject to disclosure, surely the same is true for data that can be read by a 'computer program' or a 'computer graphic system' such as Microsoft Word, Corel WordPerfect, or Adobe Photoshop." (AE Br. 48.) The CDIA brief asserts that "[o]nce relevant information becomes integrated into a mapping 'system,' the public loses access to it, and amici will not be able to integrate that data into the information services used by governments and businesses throughout the United States." (CDIA Br. 28.) The ARPH brief claims that, "[d]efining data in a GIS-compatible file format to be part of a GIS ... leads to the unfortunate conclusion that all data files, be they Microsoft Word, Adobe PDF or ESRI GIS files, should be exempted as part of

software programs under section 6254.9."[14] (ARPH Br. 14.) The MOG brief argues that "access to other types of electronic records would also be threatened," if GIS file formatted records were found exempt under Section 6254.9's computer mapping system exemption. (MOG Br. 38.) Finally, the EFF brief argues that, "[t]aken to its logical extreme, a PDF, Word document, or an Excel spreadsheet — or, for that matter, nearly any public information stored on a computer — could lose its public record status following the precedent of the Court of Appeal opinion." (EFF Br. 13.)

The Sierra Club Amici's arguments are based on the mistaken assumption that if a particular record is exempt, such as the OC Landbase in a GIS file format, then the information contained therein is also automatically exempt from disclosure even if the information is contained in other types of records. However, such an argument not only conflicts with Section 6254.9, subdivision (d), but it illustrates the purpose and operation of this subdivision. Public agencies cannot render non-GIS formatted records exempt by inputting the information contained therein

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[14] Ironically, the ARPH brief also argues that the County's actions in agreeing to disclose non-GIS formatted records containing the same information stored in its GIS-formatted records operates as a waiver of the computer mapping system exemption due Section 6254.5. (ARPH Br. 28) However, Section 6254.5 provides in relevant part: "Notwithstanding any other provisions of the law, whenever a . . . local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions." This Court has distinguished between information derived from the records and the records themselves in analyzing the exemptions set forth in Section 6254, subdivision (f). (See *Williams v. Superior Court, supra,* 5 Cal.4th at pp. 348-349 ["The required disclosures of information derived from the records about incidents, arrests, and complaints need not, in most cases, entail disclosure of the records themselves"]; see also *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1072 [citing *Williams, supra*, 5 Cal.4th at p. 354].) Thus, the ARPH brief once again erroneously conflates a record with the information contained in the record.

into a computer mapping system. Thus, consistent with subdivision (d), the County agreed to provide the Sierra Club with non-GIS file formatted records, including electronic records in an Adobe PDF format, which contained the information stored in the OC Landbase at the cost of duplication. (5 PA 1349-1350.)

IV. SECTION 6254.9'S COMPUTER MAPPING SYSTEM EXEMPTION DOES NOT CONFLICT WITH SECTION 6253.9

As the County discussed in its Answer Brief (at pp. 41-42), Section 6253.9, subdivision (g), provides that "[n]othing in this section shall be construed to permit public access to records held by any agency to which access is otherwise prohibited by statute." Section 6253.9, subdivision (a), states that it only applies to "information that constitutes an identifiable public record *not exempt from disclosure* pursuant to this chapter." (§ 6253.9(a).) Thus, the plain language of Section 6253.9 makes clear that it does not abrogate existing exemptions such as the exemption for computer mapping systems found in Section 6254.9.

The MOG and AE briefs both assert that Section 6253.9 requires the disclosure of the County's OC Landbase in a GIS file format even though the trial court found that it is part of a computer mapping system.[15] (AE Br. 22-25, 41; MOG Br. 25-28.) However, none of the Sierra Club Amici address (let alone quote) the plain language of Section 6253.9, subdivision (g), which states that "[n]othing in this section shall be construed to permit public access to records held by any agency to which access is otherwise

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[15] The AE brief and MOG briefs both tout the functionality and usefulness of GIS file formatted data when used in conjunction with computer mapping software, which is consistent with the trial court's findings. (AE Br. 4-8; MOG Br. 11-13.)

prohibited by statute." The Sierra Club itself conceded with respect to Section 6253.9 that "ultimately, depending on how one reads § 6254.9, either the GIS data requested by Sierra Club is excluded from public record status or it is not." (OB, p. 31.)

The AE and MOG briefs also appear to suggest that the passage of Section 6253.9 implicitly repealed Section 6254.9's exemption for computer mapping systems. (AE Br. 41 [Section 6253.9 and 6254.9 must be "harmonized"]; MOG Br. 27-28[16] [Section 6253.9 and 6254.9 conflict if computer mapping system is not interpreted as meaning software].) However, this Court has held that "[r]epeals by implication are not favored, and are recognized only when there is no rational basis for harmonizing two potentially conflicting laws." (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7; see also *Stone Street Capital, LLC v. California State Lottery Com'n* (2008) 165 Cal.App.4th 109, 119 ["California disfavors the implied repeal of statutes, and California law carries a strong presumption against any interpretation of two conflicting statutes which effectively repeals one of the statutes"].) As noted above, the plain language of Section 6253.9 makes clear that there is no conflict between Section 6253.9 and Section 6254.9, which would support the argument that the passage of Section 6253.9 operates to implicitly repeal Section 6254.9's exemption for computer mapping systems.[17] Thus, there is no basis for "harmonizing"

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[16] The MOG brief erroneously claims that the County is asserting that there is a conflict between Section 6253.9 and Section 6254.9. (MOG Br. 27.) To the contrary, the County argued, "under the Sierra Club's own proposed analytical framework, Section 6253.9 is irrelevant to the interpretation of Section 6254.9's computer mapping system exemption, because Section 6253.9 does not require access to exempt records." (Answer Br. 42.)

[17] Likewise, the AE brief's efforts to manufacture a conflict between Section 6254.9 and Sections 6252, 6253 and 6255 must also be rejected,

these statutes by construing the computer mapping system exemption out of existence.

V. THE SIERRA CLUB AMICI'S POLICY ARGUMENTS CONFLICT WITH THE LEGISLATURE'S DECISION TO ALLOW LOCAL AGENCIES TO SELL, LEASE, OR LICENSE COMPUTER MAPPING SYSTEMS

This Court has explained that, "its role as a court is not to 'sit in judgment of the Legislature's wisdom in balancing such competing public policies.'" (*Los Angeles County Metropolitan Transp. Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1113-14.) Rather, due respect for the power of the Legislature and for the separation of powers' requires courts to "follow the public policy choices actually discernible from the Legislature's statutory enactments." (*Ibid.*) Thus, this Court has stated that "[i]n interpreting statutes, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law, 'whatever may be thought of the wisdom, expediency, or policy of the act.'" (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.)

Here, Section 6254.9, subdivision (a), provides, "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.*" (Emphasis added). Section 6254.9, subdivision (b), provides, "[a]s used in this section, "computer software" includes *computer mapping systems*, computer programs, and computer graphics systems." Thus, on its face, Section 6254.9 was designed to allow local

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because none of these provisions operate to repeal existing exemptions to the Public Records Act's disclosure requirements. (AE Br. 38-39, 42-47.)

agencies to sell, lease, or license computer mapping systems, which would enable local agencies to recoup the costs of such systems.

The Sierra Club and its amici would have this Court believe that there are no policy considerations that support the Legislature's decision to enable local governments to sell, lease, or license computer mapping systems, including the data stored therein in a GIS file format. (See Reply Br. 41; ARPH Br. 11; CDIA Br. 13-15.) However, as discussed at length in the County's Answer Brief (at pp. 29-37), the Legislature recognized in reference to the bill that became Section 6254.9 that by allowing local agencies to recoup their development and maintenance costs from those who seek to use such databases, taxpayers are spared the burden of subsidizing such private use. Indeed, the Legislature's policy decision to adopt Section 6254.9 is entirely reasonable given that California is not alone in allowing governmental agencies to recoup the costs of developing computer mapping systems by charging fees for GIS file formatted data. Several states have adopted statutes similar to Section 6254.9, which exempt computer mapping systems from state public record disclosure laws.[18] (2 PA 447-462.)

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[18] The states of Illinois, Iowa, Maryland, Nevada and North Carolina all have public record exemptions similar to Section 6254.9, which either exempt GIS file formatted data from disclosure or allow governmental entities to charge fees to recoup their development and maintenance costs. (See 5 III. Comp. Stat. 140/7(1)(i) ["computer geographic systems." exempt from disclosure in Illinois]; Iowa Code, § 22.2 ["geographic computer database" exempt from disclosure in Iowa]; Md. Code Ann., § 10-901, et seq. [governmental units may sell mapping system services and products for a fee that "reasonably reflects the cost of creating, developing, and reproducing the product in whatever format is available" in Maryland]; Nev. Rev. Stat. Ann., § 239.054 [Nevada governmental entities may charge a fee for producing information from a "geographic information system" that covers the gathering and entry of data, as well as maintenance and updating of the database]; N.C. Gen. Stat., § 132-10 [North Carolina

While acknowledging that maintaining a GIS is expensive, the Sierra Club and its amici express indifference to the burden on taxpayers. (See Reply Br. 41-42; CDIA Br. 13-15; GIS Pro Br. 29.) The CDIA brief, which is written on behalf of the consumer data industry and industry giants like LexisNexis, suggests that the County should "draw from a tax base if expenses running government operations exceed its expectations," thus arguing that the taxpaying public should pay for the costs of maintaining a GIS, not them. (CDIA Br. 15.) However, it is clear from the plain language of Section 6254.9 and its legislative history (discussed in the Answer Brief at pp. 29-37) that the Legislature did not share the Sierra Club Amici's indifference to the burdens on taxpayers.

The County provided the trial court with evidence describing the financial impact of requiring County taxpayers to bear the full costs of funding the development and maintenance of the OC Landbase. Over the past five years, the County spent a total of $3,560,354 in maintenance costs for the OC Landbase, which is an average of $712,071 annually. (2 PA 318, 408.) Much of these costs are attributable to County staff time spent posting and updating the OC Landbase. (2 PA 308, 408.) Approximately 26 percent of these costs ($183,530 annually over the past five years) are paid with the license fee revenue the County charges to users who wish to access and use the OC Landbase in a GIS file format. (2 PA 319, 414; 5 PA 1350.) About 74 percent of the costs are paid from other County funding sources. (2 PA 319, 414; 5 PA 1350.) Without the license fee revenue, the County would need to either subsidize the difference out of general fund revenues or significantly cut its OC Landbase maintenance

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counties and cities may charge a fee as a condition to producing components of a geographical information systems].)

costs, which would lead to a reduction in services. (RT 114-116, 119, 123-125; 2 PA 314.)

The Sierra Club's own expert witness in the field of GIS, Bruce Joffe, who also co-signed the GIS Pro brief, explained that public agencies face a dilemma between making GIS databases readily available to the public versus raising adequate funds to develop and maintain such systems. (RT 48, 123.) "Agencies that are unable to fund GIS are consigned to inefficient management of geographic data." (RT 123.) Public agencies, therefore, must choose among three alternatives: (1) fund GIS development and maintenance with taxes; (2) fund GIS with fees for the sale and usage of GIS data; or (3) do without accurate, current, reliable GIS data. (RT 116, 124-125.) The Sierra Club's expert witness explained that local agencies could license GIS data to GIS users at a price designed to recoup costs, *which would allow taxpayers to recoup their investment.* (RT 114-115.) Licensing the GIS data to GIS users at a price designed to recoup costs would also limit free riders who are trying to avoid paying their share of the costs of maintaining the system. (RT 115.)

Indeed, as Mr. Joffe predicted, the current fiscal crisis illustrates the tough policy choices public agencies must make to meet the public's needs. Taxpayers ultimately bear the burden of any demand for compulsory public services or goods, including in this case, a GIS basemap that cost millions of dollars to develop and maintain. (RT 114-115; 2 PA 318-319.) Section 6254.9 was enacted to give local agencies the ability to recoup these costs from private users like the Sierra Club or the members of the Consumer Data Industry Association, rather than mandating that taxpayers bear the full burden of such costs. (4 PA 979.) The County's practice of charging a licensing fee designed to recoup some of the costs of maintaining the OC

Landbase is entirely consistent with the legislative intent and policy of Section 6254.9. The testimony of the Sierra Club's own expert witness reinforces these policy considerations. Accordingly, the Sierra Club Amici's attacks on the policy underlying Section 6254.9 should be directed toward the Legislature, rather than this Court.

VI. REVENUE AND TAXATION CODE SECTION 409 UNDERMINES THE SIERRA CLUB AMICI'S RELIANCE ON THE ATTORNEY GENERAL OPINION

"The ultimate interpretation of a statute is, of course, an exercise of judicial power and it is the responsibility of the courts to declare its true meaning even if it requires rejection of an earlier erroneous administrative interpretation." (*Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605.) Thus, while an Attorney General opinion is generally accorded great weight, this Court has declined to follow such opinions where it has found the opinion's interpretation of a statute unpersuasive. (*Moore v. Panish* (1982) 32 Cal.3d 535, 544; see *City of Long Beach v. Dept. of Industrial Relations* (2004) 34 Cal.4th 942, 952 [court declined to adopt analysis contained in Attorney General's opinion].)

Like the Sierra Club, the Sierra Club Amici rely heavily on a 2005 California Attorney General Opinion. (OB 54-58; Reply Br. 21-24, 36-38; AE Br. 23; CDIA Br. 21, fn. 8; Cohen Br. 2; MOG Br. 20-23, 35-37.) The Attorney General opined: (1) that 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 Records Act; and (2) 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. (88 Ops. Cal. Atty. Gen. 153.)

The Sierra Club and its amici raise two lines of argument that depend on the 2005 Attorney General opinion. First, the Sierra Club Amici assert that the Court should give the opinion great weight. (CDIA Br. 21, fn. 8; MOG Br. 20-23.) Second, the Sierra Club and its amici use the 2005 Attorney General opinion, which was issued 17 years after the adoption of Section 6254.9, to advance an argument based on legislative acquiesce even though the present dispute began less than two years after the issuance of the opinion. (5 PA 1082; Reply Br. 32-38; MOG Br. 35-37.)

The County addressed the Attorney General Opinion's analysis with respect to Section 6254.9 in its Answer (at pp. 36-37, 38-39, and 45-46). However, in light of the amicus curiae brief filed by the California Assessors' Association in support of the County, it should be noted that the Attorney General was specifically discussing parcel boundary map data maintained by *a county assessor*. (88 Ops. Cal. Atty. Gen. 153, fn 3 ["[o]ur focus here is the scope of the public's right to inspect and copy records maintained by a county assessor"]; CAA Br. 2-3.) Unlike the situation discussed in the Attorney General opinion, Orange County's Assessor does not store or maintain its records in a computer mapping system. (5 PA 1103-1104, 1109.) Instead, the OC Landbase, which is in a GIS file format, is maintained by Orange County's Public Works department. (5 PA 1113-1114, 1116.) Nonetheless, in light of the arguments raised by amici, the County addresses herein the Attorney General Opinion's reliance on Revenue and Taxation Code sections 408 and 409, which are applicable to assessors. (CAA Br. 11-12.)

A. The Attorney General Opinion Ignores The Plain Language of Revenue and Taxation Code Section 409, Which Allows Assessors To Recoup The Costs of Databases Containing Parcel Data

The 2005 Attorney General opinion quotes Revenue and Taxation Code section 409, subdivision (a):

> Notwithstanding Section 6257[19] of the Government Code or any other statutory provision, if the assessor, pursuant to the request of any party, provides information or records that the assessor is not required by law to prepare or keep, the county may require that a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the information.
>
> The actual cost of providing the information is not limited to duplication or reproduction costs, but may include recovery of developmental and indirect costs, such as overhead, personnel, supply, material, office, storage, and computer costs.
>
> It is the intent of this section that the county may impose this fee for information and records maintained for county use, as well as for information and records not maintained for county use.
>
> Nothing herein shall be construed to require an assessor to provide information to any party beyond that which he or she is otherwise statutorily required to provide.

(Rev. & Tax. Code, § 409(a) [emphasis added].) The statute was originally adopted in 1981 with the Legislature finding and declaring as follows:

> The assessor's office in Los Angeles County has expended considerable time and funds developing a data base from which details concerning properties within the county can be generated. The assessor's office receives numerous requests for specified information available from the data base, but because current law only permits the assessor to charge any party making such a request the cost of duplicating information, the assessor's office must absorb considerable costs in filling such requests. This act is necessary to permit the assessor of Los Angeles County to recover the cost of providing information which he is not by law required to

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[19] Former Government Code section 6257 allowed public agencies producing copies of public records to require payment of fees covering direct costs of duplication. (former Gov. Code, § 6257.) Section 6257 was repealed and replaced by Section 6253 in 1998. (Stats.1998, c. 620 (S.B.143), § 10.)

prepare or keep.

(Stats. 1981, c. 523, § 3.) At first, the statute only applied to the Los Angeles County assessor, but the statute was amended in 1983 to expand its applicability to all county assessors. (Stats. 1983, c. 116, § 1.) The statute was amended once again in 1984 to remove a sunset date from the statute. (Stats. 1984, c. 678, § 19.)

In *Statewide Homeowners, Inc. v. Williams* (1973) 30 Cal.App.3d 567, the court described the types of records that assessors are required by law to prepare or keep:

> The Revenue and Taxation Code specifically requires the assessor to prepare and keep certain records: county maps (Rev. & Tax. Code, § 327); records relating to claims for exemptions (Rev. & Tax. Code, §§ 251, 252, 254); certain property tax statements (Rev. & Tax. Code, § 441); an assessment roll containing certain specified information (Rev. & Tax. Code, §§ 601, 602); and an index to the roll (Rev. & Tax. Code, § 615). It also specifically provides in subdivision (a) of section 408: "... any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor *are not public documents and shall not be open to public inspection.*"

(*Id* at p. 570, italics in original.) The requester sought production under the Public Records Act of certain records containing parcel data that would enable it to more easily compare market values of real property with assessed values. (*Id.* at p. 569.) The requester argued that since the documents were essential to the performance of the assessor's statutory duties, *i.e.*, preparation of the assessment roll and the county property maps, the law requires the assessor to prepare the documents in the files. (*Id.* at p. 570.) The court rejected this argument, holding:

> Such a narrow interpretation of the exemption provided by the code section would render the section meaningless. If all of the information and papers accumulated and used by the assessor in the process of preparing the records which the law requires him to prepare and keep are themselves to be regarded as records he is required to prepare and keep, then every paper in his office would fall into the category.

(*Ibid.*) Thus, the court held that there was no provision requiring the assessor to prepare and keep the records sought, therefore, the records fell within the purview of Section 408, subdivision (a), of the Revenue and Taxation Code providing "... any information and records in the assessor's office which are not required by law to be kept and prepared by the assessor are not public documents and shall not be open to public inspection." (*Id.* at pp. 570-71.)

Here, the plain language of Revenue and Taxation Code section 409 contradicts the Attorney General's conclusion that the fee that may be charged by a county for a copy of parcel boundary map data maintained in an electronic format by a county assessor is limited to the amount that covers the direct cost of producing the copy. (88 Ops. Cal. Atty. Gen. 153.) In the 2005 opinion, the Attorney General acknowledged, "[t]o be sure, no provision of law dictates that a county assessor must keep this required parcel boundary map data in an electronic format; rather, the choice to do so lies within the discretion of each assessor." (88 Ops. Cal. Atty. Gen. 153.) Thus, under *Statewide Homeowners, Inc. v. Williams,* the Attorney General should have concluded that county assessors could "require that a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the information," particularly if the assessor had made records that it was required by law to prepare or keep available for public inspection. (Rev. & Tax Code, § 409(a).)

In this case, the Sierra Club stipulated that "[t]he County agreed to produce records, which were not in a GIS file format, including assessment rolls, parcel maps, tract maps, records of survey, lot line adjustments, and transfer deeds in Adobe PDF electronic format or printed out as paper copies to the Sierra Club." (5 PA 1083 [emphasis added].) The Sierra Club

Amici, therefore, cannot dispute that the County made records, which the County's assessor is required by law to prepare or keep, available for public inspection. Accordingly, if this Court were to accept the Sierra Club Amici's premise that the statutes that the Attorney General interpreted in the 2005 opinion govern this case, then the County could still permissibly "require that a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the" OC Landbase in a GIS file format under Section 409 of the Revenue and Taxation Code.

B. Section 6254.9, Along With Revenue and Taxation Code Section 409 and AB 1293, Reflect The Legislature's Policy Efforts For More Than a Decade to Permit Local Governments To Recoup Their Costs

This Court has repeatedly held that "[i]n construing a statute, our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) This Court begins "with the language of the statute, giving the words their usual and ordinary meaning." (*Ibid.*) The language must be construed "in the context of the statute as a whole and the overall statutory scheme, and we give 'significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.' " (*People v. Canty* (2004) 32 Cal.4th 1266, 1276.)

Here, although the Sierra Club Amici recite the above-referenced rules of interpretation, they ignore the fact that Section 6254.9 is part of an overall statutory scheme that was developed during the 1980s to enable local governments to recoup the costs of developing and maintaining computer mapping systems. The Sierra Club and the Sierra Club Amici repeatedly cite the 2005 Attorney General opinion, which interpreted both Section 6254.9 and Revenue and Taxation Code section 409 with respect to

electronic parcel data. (88 Ops. Cal. Atty. Gen. 153.) Thus, according to the same authority relied upon by the Sierra Club and its amici, Section 6254.9 and Revenue and Taxation Code section 409 are part of the same overall statutory scheme.

As noted above, Revenue and Taxation Code section 409 was originally enacted in 1981 to enable the Los Angeles County assessor's office to recoup the costs of developing a data base from which details concerning properties within the county can be generated. (Stats. 1981, c. 523, § 3.) As is generally the case, the Public Records Act only permitted the assessor to charge any party making a request for the data the cost of duplicating the information. (*Ibid.*) Section 409 was enacted to allow the county to require that a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the information. (Rev. & Tax Code, § 409(a).) This statute further provided that the "actual cost of providing the information is not limited to duplication or reproduction costs, but may include recovery of developmental and indirect costs, such as overhead, personnel, supply, material, office, storage, and computer costs." (*Ibid* [emphasis added.])

The Legislature subsequently expanded Section 409 twice over the next three years. In 1983, the limitation to Los Angeles County, which provided that the statute only applied to counties with a population that exceeded four million, was removed and replaced with the following sunset provision: "This section shall remain in effect only until January 1, 1985 and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date." (Stats. 1983, c. 116, § 1 (d).) In 1984, the Legislature deleted this sunset provision from the statute and the statute has since remained in effect. (Stats. 1984, c.

678, § 19.) However, Revenue and Taxation Code section 409 only applies to county assessors. (Rev. & Tax Code, § 409(a).)

In 1988, the Legislature enacted Section 6254.9, which is not limited to county assessors. (Gov. Code, § 6254.9.) As discussed in detail in the County's Answer brief (at p. 30), the City of San Jose introduced the proposed bill explaining:

> The City of San Jose, like many other government agencies has developed various computer readable data bases, computer programs, computer graphics systems and other computer stored information at considerable research and development expense. For example, the City's Department of Public Works has recently completed development of a database for a computer mapping system known as the Automated Mapping System (AMS).

(Pet.RJN., Ex. 4, p. PA 986; 4 PA 986.) At the end of this legislative effort, Section 6254.9, subdivision (b), defined exempt "computer software" as follows: "[a]s used in this section, 'computer software' includes computer mapping systems, computer programs, and computer graphics systems." (Answer Br. 35.) Thus, only four years after Revenue and Taxation Code section 409 was last amended and expanded, the Legislature again took action to expand the ability of local governments to recoup the costs of computer mapping systems.

In 1997, as noted by the Court of Appeal below, the Legislature adopted AB 1293, which would have become law if it had not been vetoed. (Slip. Op., p. 19; County RJN, Ex. 1, Assem. Bill No. 1293 (1997-1998 Reg. Sess.).) AB 1293 would have established state funding through grants "for the development of new, and maintenance of, framework data bases for geographic information systems." (County RJN, Ex. 1, Legis. Counsel's Dig. Assem. Bill No. 1293, *supra*, p. 2) The Legislature recognized "the high cost of creating and maintaining geographic information data bases,"

and observed that "[p]ublic agency policies for pricing the data range from covering the cost of data duplication, to recouping the costs from compilation and maintenance of the data bases." (County RJN, Ex. 1, Assem. Bill. No. 1293, *supra*, § 1, subd. (m).) The proposed legislation would have required "any recipient of a grant [to] make data developed or maintained with grant funds available to disclosure under the [Act] and require that the electronic data . . . be placed in the public domain free of any restriction on use or copy." (Slip. Op., pp. 19-20; County RJN, Ex. 1, Assem. Bill No. 1293, *supra*, § 2; Proposed Gov. Code, § 8306, subd. (a)(7).) Even though AB 1293 was vetoed, its near passage in 1997 once again demonstrated the Legislature's ongoing concern with the problem of funding the development and maintenance of computer mapping systems, including the data stored therein.

In short, the Sierra Club Amici themselves urge that this Court consider Section 6254.9's overall statutory background. This background begins in 1981 when the Legislature enacted Revenue and Taxation Code section 409 and continued through 1997 when the Legislature attempted to enact AB 1293, which would have created a State grant program to fund the development of such systems in return for making data in a GIS file format available to the public at no charge. Section 6254.9, therefore, did not constitute an isolated effort by the Legislature to provide local governments with a means to fund the development of computer mapping systems. Instead, the overall statutory scheme and legislative purpose that surrounds Section 6254.9 demonstrates that the Legislature was focused on trying to create sources of funding for the development of such systems.

VII. THE COURT OF APPEAL DECISION BELOW DOES NOT CONFLICT WITH THE SIXTH DISTRICT'S RULINGS IN *SANTA CLARA*

The MOG brief largely repeats the Sierra Club's argument that the court of appeal in *County of Santa Clara v. Superior Court (CFAC)* (2009) 170 Cal.App.4th 1301 ruled on the computer mapping system exemption found in Section 6254.9 (MOG Br. 8-9.) However, as explained in the County's Answer brief (at pp. 46-48), the County of Santa Clara's amicus in the *Santa Clara* case attempted to address the computer mapping system exemption, but the court of appeal specifically declined to rule on the issue. (*County of Santa Clara v. Superior Court, supra,* 170 Cal.App.4th at p. 1322, fn. 7 ["Since the point is raised only by amici curiae, we need not and do not consider it"].)

The ARPH brief articulates a slightly different version of the argument that the *Santa Clara* decision secretly ruled on the computer mapping system exemption. (ARPH Br. 29-31, 34-37.) The ARPH brief contends that the court in *Santa Clara* held that Section 6254.9 only applies to copyrighted software, and that the County of Orange is secretly asserting a copyright in the OC Landbase. (ARPH Br. 31.) However, as the court of appeal in *Santa Clara* specifically noted in footnote 9, the County of Santa Clara did not argue that the record at issue constituted exempt "computer software," as used in Section 6254.9. (*County of Santa Clara v. Superior Court, supra,* 170 Cal.App.4th at p. 1332, fn. 9.) Unlike the County of Orange, the County of Santa Clara argued in the *Santa Clara* case that "copyright protection 'is not limited to computer software,' which has its own discrete exemption in section 6254.9, subdivision (a)." (*Id.* at p. 1332.) The court in *Santa Clara* rejected this argument and held that the Santa Clara could not rely on copyright to license a non-exempt record.

(*Id.* at p. 1334.)

In sharp contrast to Santa Clara County, the County of Orange contends that its OC Landbase is exempt from disclosure under Section 6254.9, subdivisions (a) and (b), as a part of a computer mapping system. The County of Orange is not secretly relying on copyright law as suggested by the ARPH brief. (ARPH Br. 31.) Thus, the ARPH brief's efforts to manufacture an additional conflict in the holdings between the Court of Appeal decision below and the court in *Santa Clara* with respect to copyright issues should be rejected.

VIII. THE PUBLIC HAS EXISTING AND ADEQUATE REMEDIES IF AN AGENCY CHARGES EXCESSIVE FEES FOR RECORDS IN A GIS FILE FORMAT

The term "special taxes" in article XIII A, section 4, does not include fees which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 876; *Townzen v. County of El Dorado* (1998) 64 Cal.App.4th 1350, 1359.) This Court has long held that "a fee may be charged by a government entity so long as it does not exceed the reasonable cost of providing services necessary to regulate the activity for which the fee is charged.[20] (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 437.)

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[20] Consistent with these constitutional requirements, Section 409 of the Revenue and Taxation Code, which is discussed above, authorizes a county assessor to charge "a fee reasonably related to the actual cost of developing and providing that information be paid by the party receiving the information." (Rev. & Tax Code, § 409.)

Here, several of the Sierra Club Amici argue that recognition of the computer mapping system exemption would result in public agencies charging excessive, "unlimited" fees for GIS file formatted records. (AE Br. 2, 13-14; ; ARPH Br. 12; CDIA Br. 31; MOG Br. 13.) Ironically, the Cohen brief answers these arguments by noting that this case does not address whether an excessive licensing fee would be a "tax" under Proposition 26. (Cohen Br. 1, fn. 2.) The Sierra Club Amici acknowledge that the County has repeatedly reduced its fees to ensure that the public is not overcharged. (AE Br. 14, fn. 10; ARPH Br. 12, fn. 19.) As discussed in the County's Answer brief (at p. 5, fn. 2), the County significantly reduced its OC Landbase licensing fees after it prevailed in the Court of Appeal. The County's fee reduction was based on a survey of jurisdictions that charged licensing fees for geographic data in GIS file format similar to the OC Landbase and the County's current fees are lower than the average of such fees. (County RJN, Ex. 2.) Thus, the Sierra Club Amici's arguments regarding the amount of the County's licensing fees are misplaced and unripe, since this case does not include any actual legal claim that the County's licensing fees exceed the costs of developing and maintaining the OC Landbase.

CONCLUSION

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

Dated: May 11, 2012

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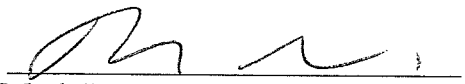
By: 
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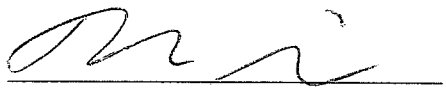
I certify that this brief contains 13,623 words, not including tables or this certificate, according to the word count function of the word-processing program used to produce the brief. Therefore, the number of words in the brief complies with the requirements of California Rules of Court Rule 8.204(c)(1).

By: 

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PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 West Santa Ana Boulevard, Suite 407, Santa Ana, California 92701. I am not a party to the within action.

On May 14, 2012 I served the foregoing

CONSOLIDATED ANSWER TO AMICUS CURIAE BRIEFS

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Eileen Blanton

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

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