Court of Appeal No. G044138

(Orange County Superior Court Case No. 0-2009-00121878-CU-WM-CJC)

Court of Appeal of the State of California
Fourth Appellate District, Division Three

SIERRA CLUB,
Petitioner
vs.
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE,
Respondent.

COUNTY OF ORANGE,
Real Party in Interest.

FROM THE SUPERIOR COURT FOR ORANGE COUNTY
The Honorable James J. Di Cesare, Judge
Department C-18 – (657) 622-5218

PETITION FOR EXTRAORDINARY WRIT PURSUANT TO CALIFORNIA PUBLIC RECORDS ACT; MEMORANDUM STAY OF COSTS REQUESTED

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Fourth APPELLATE DISTRICT, DIVISION Three	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name; State Bar number, and address): Sabrina D. Venskus SBN 219153 21 South California Street, Suite 204 Ventura, California 93001 TELEPHONE NO.: (805) 641-0247 FAX NO. (Optional): E-MAIL ADDRESS (Optional): venskus@lawsv.com ATTORNEY FOR (Name): The Sierra Club	Superior Court Case Number: 0-2009-00121878-CU-WM-CJC FOR COURT USE ONLY
APPELLANT/PETITIONER: The Sierra Club RESPONDENT/REAL PARTY IN INTEREST: Superior Court / County of Orange	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): The Sierra Club

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 25, 2010

Sabrina D. Venskus
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

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APP-008 [Rev. January 1, 2009]

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I. Introduction

Petitioner the Sierra Club requested a copy of County of Orange's OC Landbase under the California Public Records Act. ("PRA", Gov. Code sections 6250-6276.48.) The OC Landbase is a database containing information about each legal parcel of real property in the county, including geographic information specifying the parcel's boundaries. Orange County denied the request, claiming that the OC Landbase is part of a "computer mapping system," that computer mapping systems are included within the PRA's definition of "computer software," and that the PRA does not require disclosure of computer software.

The Sierra Club petitioned the Superior Court in Orange County for a writ of mandate compelling Orange County to disclose the OC Landbase under the PRA, and the trial court denied the Sierra Club's petition, based on the computer-software exclusion. The Sierra Club now appeals that decision in this petition for an extraordinary writ, the only means of appeal allowed under the PRA.

II. Petition for Extraordinary Writ

By this extraordinary writ petition, Petitioner, the Sierra Club, alleges:

A. Authenticity of Documents Filed Concurrently

1. All documents in the Petitioner's Appendix filed concurrently with this petition are true copies of original documents on file

with or admitted into evidence by the respondent court, except for the Document Index in Volume 1.

2. The Reporter's Transcript filed concurrently with this petition is a true copy of the original reporter's transcript of the hearings of November 5, 2009, April 12-13, 2010, and May 21, 2010 on Petitioner's motion for Writ of Mandate, except for the Witness Index and Exhibit Index at the beginning of the volume.
3. The Exhibits in Petitioner's Appendix pages PA-1161 through PA-1317 were admitted into evidence by the trial court during the hearings of April 12-13, 2010.

B. Parties & Beneficial Interest of Petitioner

4. This petition arises from an action in the Superior Court of California, County of Orange, *Sierra Club v. County of Orange*, filed April 21, 2009, Case No. 0-2009-00121878-CU-WM-CJC, heard in Dept. C-18 by the honorable James J. Di Cesare.
5. Petitioner, the Sierra Club, was petitioner in the action.
6. Real Party, County of Orange, was respondent in the action.
7. On May 21, 2010 the trial court denied the Sierra Club's petition for a writ of mandate. Petitioner has a beneficial interest in the outcome of the action.

C. Extraordinary Writ is Proper as Appeal from Trial Court's Denial of Writ of Mandate under the Public Records Act

8. The California Public Records Act, in section 6259(c),[1] provides that an order of the court refusing to direct a public official to disclose information under the PRA is reviewable by petition to the appellate court for the issuance of an extraordinary writ.

9. Since writ review is the only means to obtain review of the trial court's denial of Sierra Club's petition for writ of mandate, this court should grant this petition for writ review. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113 ["When an extraordinary writ proceeding is the only avenue of appellate review, a reviewing court's discretion is quite restricted. Referring to the writ of mandate, this court has said: " 'Its issuance is not necessarily a matter of right, but lies rather in the discretion of the court, but where one has a substantial right to protect or enforce, and this may be accomplished by such a writ, and there is no other plain, speedy and adequate remedy in the ordinary course of law, he [or she] is entitled as a matter of right to the writ, or perhaps more correctly, in other words, it would be an abuse of discretion to refuse it.' " "].)

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[1] Section references will be to the Government Code unless indicated otherwise.

10. The filing of this petition is timely. The court's notice of entry of the order was served upon Sierra Club on August 9, 2010 (Proof of Service of Notice of Entry of Judgment, PA at 1369), and this petition was filed on August 27, 2010, within 20 days after the service of the order, as required by section 6259(c).

D. The Nature of Petitioner's Request

11. The Sierra Club requested a copy of the Orange County Landbase ("OC Landbase") from Orange County pursuant to the Public Records Act. (Exhibits to Stipulated Facts, PA at 1086, 1106, 1116, and 1121.)
12. The OC Landbase is a database containing a set of data items for each of the over 640,000 legal parcel of land in Orange County. The OC Landbase data items for each parcel include the Assessor's Parcel Number ("APN," a number used by the Assessor to uniquely identify each parcel), the parcel's street address, the name and address of the legal owner of the parcel, and parcel boundary data. (Stipulated Fact No. 15 at PA-1083; OC Landbase FAQ, PA at 116.)
13. All of the data for each parcel in the OC Landbase, except the parcel boundary data, is standard printable text data. (Declaration of Bruce Joffe at 3:23-26, PA at 527; Declaration of Amanda Recinos at 26:20-24, PA at 540.)
14. The parcel boundary data is GIS data. (Declaration of Bruce Joffe at 3:19-29, PA at 527.)

15. GIS is an acronym for "geographic information systems," which, depending on the context, may refer to a set of software tools that direct the computer to perform spatial manipulations and analyses, the data on which such tools operate, or both. (Declaration of Bruce Joffe at 5:7-21, PA at 529).
16. The parcel boundary GIS data is computer data specifying the geographic locations of the boundaries of each land parcel, referenced to the boundaries' latitudes and longitudes, or an equivalent geographical coordinate system. (Declaration of Amanda Recinos ¶¶ 22, 23, PA at 540-541.)
17. GIS software can read the parcel boundary data in the OC Landbase, and display the information as a map of the Orange County land parcels. (*Ibid.*)
18. GIS software can be used to analyze the OC Landbase in various ways based on geographical and other characteristics of the individual parcels. (*Id.* ¶¶ 23, 26, PA at 541.)
19. The OC Landbase contains data only. It does not contain software. (Stipulated Fact 20, PA at 1083 ["The OC Landbase in the format the Sierra Club has requested, and in which it is currently distributed to OC Landbase licensees, does not contain programs, routines and symbolic languages that control the functioning of computer hardware and direct its operation." The latter part of this stipulated fact ("programs,

routines . . . operation." is the definition of "software" in the American Heritage Dict. (4th ed. 2004), p. 1652.].)

20. The OC Landbase is used every day by several Orange County departments to make important decisions. (GIS Needs Assessment Study, attached to the Request for Judicial Notice filed concurrently with this petition as Exhibit 2, at OC-1215.) A GIS Needs Assessment Study, recently conducted by an external consulting firm at the behest of Orange County, found that the OC Landbase was "the most essential data set in the county. (*Id.* at OC 1455.) It contains the reference data that is consulted whenever an OC Public Works employees needs to know the boundaries, location, ownership or other characteristics of a parcel of land in the county. (*Id.* at OC-1463.) The GIS Needs Assessment recommended rolling out this OC Landbase access "countywide." (*Ibid.)* Because of this wide applicability and extensive use, it is one of the most important public records maintained by Orange County.
21. The Sierra Club did not request any software from Orange County. The Sierra Club owns its own GIS software, which the Sierra Club could use to display and analyze the OC Landbase data. (Declaration of Dean Wallraff in Support of Motion for Writ of Mandate ¶ 8 at 1, PA at 106, ¶ 34 at 4-5, PA at 109-110.)

22. The Sierra Club uses GIS parcel data such as the OC Landbase to prepare accurate maps for its conservation campaigns, including its "Open Spaces, Wild Places" campaign to preserve open space in Orange County. (*Id.* ¶¶ 4-6, 16 at 1-2, PA at 106-07.)

23. The vast majority of California Counties provide their GIS parcel data to the public free of charge or for a small fee covering the cost of copying the data to a CD or DVD. (Declaration of Bruce Joffe ¶¶ 35-37 at 9-10, PA at 533-34.)

E. Chronology of Pertinent Events

24. On June 21, 2007, April 28, 2008, June 23, 2008 and February 9, 2009 the Sierra Club sent letters to Orange County requesting each time an electronic copy of the OC Landbase. (Exhibits to Stipulated Facts, PA at 1086, 1106, 1116, and 1121.)

25. Orange County replied to the Sierra Club's letters on July 2, 2007, June 6, 2008, July7, 2008, and March 5, 2009, respectively, each time denying the request on various grounds. (Exhibits to Stipulated Facts, PA at 1103, 1113, 1118, and 1124.)

26. The only ground for denial of the Sierra Club's request at issue in this case is the PRA's computer-software exception, Gov. Code section 6254.9 (Orange County Trial Brief at 5:14-15, PA at 1137), which Orange County referenced in all of its denial letters. (PA at 1103, 1114, 1119, and 1125)

F. The Trial Court Action

27. On April 21, 2009, the Sierra Club filed a Petition for Writ of Mandate in Orange County Superior Court, to enforce its right under the Public Records Act to obtain a copy of the OC Landbase from Orange County for the direct cost of making the physical copy of the data. (PA at 3, tab 1.)
28. The case was assigned to the Honorable James J. Di Cesare in Dept. 1-18.
29. After Orange County answered (PA at 83.), the Sierra Club filed a Motion for Writ of Mandate on October 9, 2009 (PA at 83., tab 2.)
30. After issuing its Tentative Decision in the form of a Minute Order (PA at 497, tab 12.), the court heard oral arguments on November 5, 2009 (RT at 1-33.)
31. After both parties conducted further discovery, the Sierra Club filed a motion requesting an additional round of briefing. (PA at 501, tab 13.)
32. The parties submitted additional declarations and exhibits attached to the briefing on this motion (PA at 525-927, tabs 13-15.)
33. The court in the end denied the motion for additional briefing, ruling that the moving party mooted the request for additional briefing by including arguments relating to the merits in its request for additional briefing. (Minute Order dated May 21, 2010 at 4, PA at 1321, tab 21.)

34. The parties agreed to a set of stipulated facts on April 21, 2009. (PA at 1081, tab 18.).
35. The court conducted an evidentiary hearing in the case on April 12 and 13, 2010. (RT at 36-272.)
36. The Joint Exhibit List and Exhibits admitted into evidence during the hearing are included in Petitioner's Appendix (Tab 20, PA at 1155-1317; see RT at 38 for Court Reporter's certified list of Exhibits identified and admitted.)
37. On May 21, 2010, Judge Di Cesare read his amended minute order denying the Sierra Club's petition for writ of mandate in open court (RT at 282-92.), and issued the Minute Order (PA-1138-21, tab 21.)
38. In the Minute Order he ordered Orange County to prepare a Statement of Decision in the case. (PA at 1321, tab 21.)
39. On June 1, 2010, Orange County filed its Proposed Statement of Decision. (PA at 1338, tab 22.)
40. On June 17 the Sierra Club filed objections to the Proposed Statement of Decision, objecting specifically to the court's determination, as a factual matter, that the OC Landbase is "part of" a computer mapping system. (PA at 1340, tab 23.)
41. On August 3, 2010, the court issued its Statement of Decision ("SOD"), a slightly modified version of Orange County's Proposed Statement of Decision. (PA at 1347, tab 25.)

42. The Statement of Decision overruled all objections to evidence by Orange County, and granted the requests for judicial notice by both parties. (PA at 1361, tab 25.)
43. On August 9, 2010, the court also entered judgment in the case, denying the Sierra Club's petition for writ of mandate, and served notice of the entry of judgment upon the Sierra Club (PA at 1364-1369, tab 26.)
44. Sierra Club filed this Petition for Extraordinary Writ on August 27, 2010.

G. Absence of Other Remedies

45. Government Code section 6259(c) states that the trial court's decision supporting Orange County's refusal to disclose the Landbase under the PRA is not appealable under Civil Code section 904.1, but that the order is immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.
46. Therefore writ relief is the only remedy provided by applicable law.

H. Grounds for Temporary Stay of Costs

47. It would be unduly burdensome to require the Sierra Club, a non-profit organization with limited funding, to pay costs in this action before the final determination of the outcome by this Court.

48. Therefore, Sierra Club requests that the Court stay costs until the Sierra Club's petition for extraordinary writ is granted or denied.

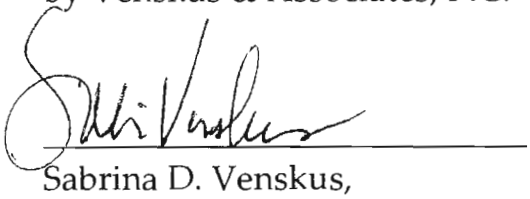
I. Prayer for Relief

Petitioner prays that this court:

1. Issue an alternative writ directing respondent superior court to set aside and vacate its order of August 3, 2010 denying Petitioner the Sierra Club's motion for a Writ of Mandate or to show cause why it should not be ordered to do so, and upon return of the alternative writ to issue a peremptory writ directing respondent superior court to set aside and vacate its order of August 3, 2010 denying Petitioner the Sierra Club's motion for a Writ of Mandate and directing respondent superior court to enter a new and different order granting Petitioner's motion for a writ of mandate directing Respondent County of Orange to produce a copy of the OC Landbase in electronic form to the Sierra Club, for the direct cost of making the copy;
2. Award petitioner costs pursuant to rule 8.493 of the California Rules of Court; and
3. Grant such other relief as may be just and proper.

Dated: August 25, 2010

Respectfully submitted ,
by Venskus & Associates, P.C.



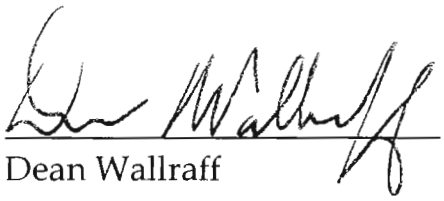
Sabrina D. Venskus,
Attorney for Petitioner,
the Sierra Club

Verification

I, Dean Wallraff, declare as follows:

I am the law clerk for the attorney for the petitioner in this action. I have read the foregoing petition for an extraordinary writ and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than petitioner, verify this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on August 25, 2010 at Los Angeles, California.



Dean Wallraff

III. Memorandum

A. Introduction

The only issue in this case is whether the Public Record Act's computer-software exception in Gov. Code section 6254.9 applies to Geographic Information Systems (GIS) data such as the OC Landbase.

The trial court accepted the County's faulty and unsupportable notion that because GIS parcel data is "part of" a computer mapping system, it must be computer software as that term is defined in section 6254.9 of the Public Records Act, and therefore is exempt from disclosure. In making this ruling, the trial court contravened previous authority: a 2005 Opinion of the Attorney General, and a 2009 Court of Appeal decision. The trial court's interpretation does considerable violence to the plain meaning of the statute, goes against the legislature's intent as evidenced by the legislative history, and clashes with the public policy of liberal disclosure as contained in the California Constitution and the Public Records Act itself. The trial court's decision, if affirmed, ***would vastly expand the types of computer data excluded from disclosure under the PRA***.

This Court should reject the trial court's faulty reasoning regarding the interpretation of section 6254.9, and hold, as all previous authority has held, that "computer software," as used in section 6254.9, means software, not software plus data.

B. The Standard of Review is De Novo Because the Trial Court Made No Findings of Adjudicative Fact.

The only issues raised upon appeal are issues of statutory interpretation, in particular the interpretation of the PRA's computer software exception set forth in section 6254.9. Questions of statutory interpretation are reviewed de novo. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311.)

The only factual disputes decided by the trial court involve legislative facts related to statutory interpretation.

> Legislative facts are facts which help the tribunal determine the content of law and of policy and help the tribunal to exercise its judgment or discretion in determining what course of action to take while adjudicative facts are facts concerning the immediate parties – who did what, where, when, how, and with what motive or intent....

(*Dominey v. Dept. of Personnel Admin.* (1988) 205 Cal.App.3d 729, 737 [internal quotation marks omitted].) A trial court's determination of legislative facts is reviewed de novo by the Court of Appeal. (*Southern Pacific Trans. Co. v. State Bd. of Equalization* (1987) 191 Cal.App.3d 938, 957. ["[I]n this case there is no genuinely disputed *adjudicative* fact. The scope of our review . . . is not confined by the substantial evidence test."].) For a more complete discussion of the distinction between legislative and adjudicative facts, see the Request for Judicial Notice filed concurrently with this petition.

1. The Adjudicative Facts in the Case are Undisputed.

Here, the adjudicative facts are simple and straightforward; the parties have stipulated to them:

- The Sierra Club requested a copy of the OC Landbase in GIS format pursuant to the Public Records Act. (Stipulated Facts No. 1, 3, 7, and 9, PA at 1082.)
- The OC Landbase, as requested by the Sierra Club, and as Orange County distributes it to licensees, contains data only, not software. (Stipulated Fact No. 20, PA at 1083.)
- Orange County denied Sierra Club's request for the OC Landbase, on the grounds that the OC Landbase is not a public record because it falls within section 6254.9's software exception. (*See, e.g.* Exhibit J to Stipulated Facts, PA at 1124-25.)

2. The Court's Findings as to the Meanings of Terms Used in the PRA, and as to the Meanings of Other Terms Used to Construe the PRA, are Legislative Facts Subject to De Novo Review.

Based on the distinction quoted above from *Dominey*, the trial court's determinations as to the meaning of "GIS," "computer mapping systems" and other terms used to interpret section 6254.9 are determinations of legislative fact subject to de novo review.

3. The Court's Finding that the OC Landbase is "part of" a Computer Mapping System is a Legal Conclusion Subject to De Novo Review.

The "Factual and Procedural Background" section of the trial court's statement of decision ("SOD") contains a paragraph analyzing the definitions of "computer mapping systems," "GIS," and "Land Information Systems," ultimately concluding that "[t]he OC Landbase data, which is in a GIS file format, constitutes a part of a computer mapping system." (SOD at 3:2-13, PA at 1349.) This is a legal, not a factual, determination because it is an interpretation of the term "computer mapping systems" as used in section 6254.9(b). The issue is whether the legislature meant for the term to include computer mapping system software only, or, in addition, the GIS data upon which it operates. As statutory interpretation, and as a legal not factual conclusion, the trial court's conclusion is subject to de novo review.

The trial court's conclusion that the OC Landbase is part of a computer mapping system is similar to the trial court's conclusion in *Employers Casualty Co. v. Northwestern Nat. Ins. Group* that insurance coverage existed in that case. (109 Cal.App.3d 462, 473-74 (1980).) The decision contained no factual basis at all for the legal conclusion that coverage existed. The Court of Appeal reversed and remanded, with directions to the trial court to make factual findings to show the basis for its legal conclusion concerning the existence of insurance coverage. (*Id.* at p. 475.) Similarly, in *Hunter v. Sparling*, the trial

court made a purported factual finding that certain retirement rules were not a part of the plaintiff's employment contract. (87 Cal.App.2d 711, 721 (1948).) The Court of Appeal held this was "not a finding of fact at all, but a misplaced conclusion of law. . . ." (*Ibid.*)

Here, the trial court's determination that the OC Landbase is "part of" a computer mapping system is a misplaced conclusion of law because the SOD contains no factual basis for such an assertion. As basis for this finding, the SOD cites Mr. Jelinek's testimony (SOD at 3:12-13, PA at 1349 [citing RT at 200:2-26]), but the cited testimony merely alleges "computer mapping system" is an early term for GIS. There are no facts in the SOD or elsewhere in the record that establish any special relationship between GIS data such as the OC Landbase and GIS software that would make GIS data "part of" GIS software. The conclusion that the OC Landbase is "part of" a computer mapping system is entirely based on a statutory interpretation of "computer mapping system," as that term is used in section 6254.9(b). Because the proper interpretation of a statute is a legal question, not a factual one, the trial court's determination that the OC Landbase is "part of" a computer mapping system is subject to de novo review.

C. The Trial Court Erred in Holding the OC Landbase is Not a Public Record Subject to Disclosure under the PRA.

The trial court decided that the OC Landbase is not a public record subject to disclosure under the PRA. (SOD at 7:20-22, PA at

1353.) This decision is based solely on the court's interpretation of section 6254.9 computer-software exception. (*Id.* at 6:16-7:22, PA at 1352-53.) Orange County conceded that the interpretation of this section is the only issue in this case. (Orange County Trial Brief at 5:14-15, PA at 1137).

The SOD expressly states that the decision is not based on a balancing of the public interest in disclosure against the public interest in nondisclosure under section 6255. There is no other basis asserted in the SOD for the trial court's denial of the Sierra Club's petition.

As argued below, the correct interpretation of section 6254.9 is that computer databases containing GIS data are not considered software under the PRA. There is also substantial authority holding that such databases are public records, which must be disclosed under the PRA.

1. The OC Landbase is Within the Definition of "Public Record" in the PRA.

> "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

(Section 6252(e).) The definition is "intended to cover every conceivable kind of record that is involved in the governmental process." (*San Gabriel Tribune v. Superior Court* (1983), 143 Cal.App.3d 762, 774.)

> "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(Section 6252(g).) A county is a local agency by definition under section 6252.

The OC Landbase is a writing as defined above because it is recorded upon magnetic computer disks, which are tangible things. The OC Landbase is a public record under the definition quoted above since (1) it consists of writings that relate to the conduct of the public's business, namely the records concerning who owns which parcels of real property, and (2) it is prepared by, owned by, used by and retained by the Orange County.

Therefore, under the definition in the PRA, the OC Landbase is a public record. The Attorney General's opinion came to the same conclusion (88 Ops.Cal.Atty.Gen 153 (2005) ("AG Opinion") at 6, PA at 177.) Orange County conceded in the trial court that the data in the OC Landbase is a public record. (RT at 264:26-265:2). There is no dispute that the PRA requires disclosure of the OC Landbase if it does not fall within the section 6254.9 computer-software exception.[2]

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[2] This brief will use the term "exception" to denote a statutory provision that a certain type of information is not a public record;

Orange County argues that, solely as result of the application of this section, the OC Landbase is not a public record. As argued below, because the OC Landbase is data and not software, the County cannot avail itself of this exception, and therefore the OC Landbase is a public record subject to disclosure under the PRA.

2. The PRA Requires the OC Landbase be Disclosed in the Electronic Format Requested by the Sierra Club.

The trial court found that Orange County offered to produce the information contained in the OC Landbase in a different format without a license, for the cost of reproduction, and this is all the PRA requires. (SOD at 10:12-15, PA at 1356.) In making this determination, the trial court misconstrued the PRA.

a) Section 6253.9 requires disclosure of a public record in the requested electronic format.

Section 6253.9(a) reads:

> Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
>
> (1) The agency shall make the information available in any electronic format in which it holds the information.

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the term "exemption" will refer to a provision stating that particular information constituting a public record is exempt from disclosure under the PRA.

> (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

Since the OC Landbase is a public record subject to disclosure, this section applies. The Sierra Club is willing to accept the OC Landbase in either the MGE format specified in its request letter dated June 23, 2008 (PA at 1116) or the Oracle Spatial format in which Orange County currently maintains and distributes the data.. (*See* Memo from Raymond Mathe to OC Landbase Users dated April 27, 2009 ("Mathe Memo"), PA at 576-77; OC Geomatics document "How to Import OCLIS Data" at p. 3, PA at 585.) Since Orange County holds the information in Oracle Spatial format, and makes the OC Landbase available to other agencies in this format, section 6253.9 requires the County provide it to the Sierra Club in this format.

b) It is irrelevant that County of Orange has offered to disclose some of the requested data in another form.

Orange County has offered to produce electronic or paper copies of the original records from which the OC Landbase was compiled for the cost of reproduction. The County's offer is unhelpful to both parties and is legally irrelevant, since section 6253.9 requires the County to produce the records in the electronic format requested by the Sierra Club.

3. All Previous Authority Holds that the OC Landbase is a Public Record which Must be Disclosed Under the PRA.

a) The Attorney General's opinion holds that GIS parcel data is a public record.

The Attorney General of the State of California issued an opinion exactly on point in 2005, which concluded 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." (AG Opinion at 2, PA at 173.) While that opinion is not binding on this court, the California Supreme Court has held that "substantial weight" should be given to opinions of California Attorney General. (*Bruce v. Gregory* (1967) 65 Cal.2d 666, 676.) Here, the trial court gave short shrift to the AG Opinion in its SOD. (SOD at 9:7-13, PA at 1355.)

The Attorney General was asked the question "Is parcel boundary map data maintained in an electronic format by a county assessor subject to public inspection and copying under provisions of the California Public Records Act?" (AG Opinion at 1, PA at 172.) "Parcel boundary map data," as the term is used in the opinion, means "detailed geographic information that is regularly prepared, maintained, and updated for use by California's county assessors to describe and define the precise geographic boundaries of 'assessor's parcels' – units of real property for which property taxes are assess throughout the state." (*Id.* at 2, PA at 173.) The OC Landbase consists of this type of information, though it is not maintained by the Orange County Assessor.

The AG Opinion first analyzes the PRA's definition of "public records," and section 6253.9, determining that "[i]t is apparent from the provisions of sections 6252 and 6253.9 that parcel boundary map data maintained by a county assessor in an electronic format is subject to inspection and copying by members of the public unless some exemption applies allowing nondisclosure." (AG Opinion at 6, PA at 177.)

The AG Opinion goes on to analyze two possible exemptions: (1) the computer-software exemption in section 6254.9 – discussed in detail below – and Revenue and Taxation Code section 408.3, which applies only to information maintained by county assessors, and is not relevant here since the OC Landbase is maintained not by the Orange County Assessor but by Orange County Geomatics, a division of the Orange County Public Works Department. (Declaration of Robert Jelinek ¶¶ 1, 2 at 1:3-14, PA at 308.) After a lengthy legal analysis the opinion states that neither of these exceptions applies to parcel boundary map data, and concludes that parcel boundary map data is subject to PRA disclosure. (AG Opinion at 12, PA at 183.)

b) The Court of Appeal in County of Santa Clara v. Superior Court of Santa Clara County *holds that a parcel database is a public record for purposes of the PRA, and this holding is precedent in this case.*

In a case that is ***factually indistinguishable*** from the case at bar, the California First Amendment Coalition (CFAC) sued Santa Clara County in 2006 to obtain its "GIS basemap" – the equivalent of the

OC Landbase – under the PRA. The *Santa Clara* trial court held that the GIS basemap was a public record subject to disclosure under the PRA (PA at 266-67), and the Court of Appeal affirmed this decision. (*County of Santa Clara v. Superior Court of Santa Clara County* (2009) 170 Cal.App.4th 1301 ["*Santa Clara*"].)

Here, the trial court erred in holding that the *Santa Clara* decision is not controlling in this action (SOD at 8:24, PA at 1354); that decision is binding precedent because the court's holding was based upon its determination the basemap – the equivalent of the OC Landbase – is a public record. The computer-software exemption in section 6254.9(a) ("Computer software developed by a state or local agency is not itself a public record under this chapter."), which is extensively discussed below and is an important issue in this case, was discussed briefly by the *Santa Clara* court. The Court there, citing the Attorney General Opinion (discussion *supra*) with approval, determined the GIS basemap is a public record, and not subject to the section 6254.9(a) computer-software exemption:

> The County conceded below that the GIS basemap is a public record. The contrary arguments of its amici curiae notwithstanding, that concession appears well founded. (*Cf. 88 Ops.Cal.Atty.Gen. 153, 157 (2005*) ["parcel boundary map data maintained by a county assessor in an electronic format is subject to public inspection and copying . . ." under CPRA].) Since the GIS basemap is a public record, the County cannot claim the computer software exemption of 6254.9, subdivision (a).

(*Santa Clara, supra,* 170 Cal.App.4th 1301, 1332 n.9.) Without more, this footnote would be dicta. However, the court makes use of this determination in its holding on whether section 6254.9(e) ("Nothing in this section is intended to limit any copyright protections.") applies to the GIS basemap. Santa Clara County argued that they had copyrighted the GIS basemap, and the copyright entitled them to demand an end-user agreement to protect their copyright interest. (*Id.* at p. 1331.) The court denied Santa Clara's copyright claim, concluding that section 6254.9 does not apply to the GIS basemap because it is not software:

> By the express terms of *section 6254.9*, the Legislature has demonstrated its intent to acknowledge copyright protection for software only. In sum, while *section 6254.9* recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.

(*Santa Clara, supra,* 170 Cal.App.4th 1301, 1334). This holding – that Santa Clara cannot claim copyright protection under section 6254.9(e) for the GIS basemap because the GIS basemap is not software – is dependent on the court's finding that the GIS basemap is not software. Because the result in the case depends upon the court's finding that the GIS basemap is not software, that determination is a holding – binding precedent – and not dicta. Since the Santa Clara GIS basemap is the exact functional equivalent of the OC Landbase, this Court should also conclude the OC Landbase is not software, under the section 6254.9 definition.

D. The OC Landbase is a Public Record Subject to Disclosure Under the PRA Because the Section 6254.9 Software Exception Does Not Apply.

Section 6254.9 reads, in its entirety:

> (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.

The California Constitution's requirement of narrow interpretation of statutes limiting public access to public information (Cal. Const., art. I, section 3, subd. (b), par. 2.) compels a narrow interpretation of section 6254.9, but the trial court's interpretation is unduly broad.

1. PRA Disclosure Provisions Must be Interpreted Broadly; Exemptions Such as the Software Exemption Must be Interpreted Narrowly.

The California Constitution, case law, and the PRA itself contain strong mandates in favor of public disclosure of information relating to the public's business maintained by public agencies.

a) Statutory and case law shows a strong public policy in favor of disclosure of public records.

"[A]ccess to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Section 6250.) As our Supreme Court has observed: "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) "By its own terms, the CPRA embodies a strong policy in favor of disclosure of public records." (*Lorig v. Medical Bd.* (2000) 78 Cal.App.4th 461, 467.) "[A]ll public records are subject to disclosure unless the Legislature has expressly provided to the contrary." (*Williams v. Superior Court* (1993), 5 Cal.4th 337, 346.)

b) The California Constitution provides the public with a right to access public records, and a requirement that provisions restricting public access be interpreted narrowly.

The California Constitution provides, "The people have the right of access to information concerning the conduct of the people's business. . . ." (Cal. Const., art. I, section 3, subd. (b).) This civil right

was added to the California Constitution by Proposition 59 ("Prop. 59"), which was approved overwhelmingly by the electorate in 2004.

Contents of an official voter-information pamphlet constitute the legislative history of a ballot proposition. (*See, e.g. Strauss v. Horton* (2009) 46 Cal.4th 364, 400; *Allen v. Sully-Miller Contracting Co*. (2002) 28 Cal.4th 222, 229.) The November 2004 official voter-information pamphlet for Prop. 59 demonstrates the People's legislative intent in passing this constitutional amendment:

> What will Proposition 59 do? It will create a new civil right: a constitutional right to know what the government is doing, why it is doing it, and how. It will ensure that public agencies, officials, and courts broadly apply laws that promote public knowledge. It will compel them to narrowly apply laws that limit openness in government—including discretionary privileges and exemptions that are routinely invoked even when there is no need for secrecy. It will create a high hurdle for restrictions on your right to information, requiring a clear demonstration of the need for any new limitation. It will permit the courts to limit or eliminate laws that don't clear that hurdle. It will allow the public to see and understand the deliberative process through which decisions are made. It will put the burden on the government to show there is a real and legitimate need for secrecy before it denies you information.

(2004 Official Voter Information Guide, Argument in Favor of Prop. 59, <http://vote2004.sos.ca.gov/voterguide/propositions/prop59-arguments.htm> [as of May 7, 2010], attached to the Request for Judicial Notice filed concurrently with this petition as Exhibit 3, at

RJN3-002.) This statement creates a strong presumption in favor of the disclosure of information kept and used by public agencies.

Prop. 59 also added requirements to the California Constitution that specifically apply to the statutory interpretation of the PRA:

> 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 people's right of access, and narrowly construed if it limits the right of access.

(Cal. Const., art. I, section 3, subd. (b), par. 2.) Since the PRA was enacted in 1968, and section 6254.9 was added in 1988, long before the adoption of Prop. 59 in 2004, this provision controls the interpretation of the PRA, including section 6254.9. It is a strong constitutional mandate requiring the Court to broadly interpret the definition of "public record" in the PRA, and narrowly interpret any exceptions and exemptions, including the computer-software exception in section 6254.9.

2. Under the Plain-Meaning Interpretation of Section 6254.9 the Term "Computer Software" Does Not Include Data, so the OC Landbase Does Not Fall Within the Computer Software Exception.

The trial court ruled that the OC Landbase is "part of" a computer mapping system and, as such, included within the statutory definition of "computer software" contained in section 6254.9(b). (SOD at 7:19-22, PA at 1353.) The job before this

Court is to decide which of the following two interpretations of section 6254.9 stands:

- The plain-meaning interpretation: Computer software means computer software, which has the same meaning when used in its common and its technical senses. Section 6254.9(b) (the "Includes Clause") provides illustrative examples of types of computer software, but does not enlarge the statutory definition of "computer software." As used in this section, the terms "computer mapping systems," "computer software," and "computer graphics systems," do not include the data operated upon by the software.
- The County's expanded-meaning interpretation: The common/technical meaning of "computer software" plays little role in interpreting section 6254.9. The term is defined to consist of the three enumerated items, namely computer mapping systems, computer programs, and computer graphics systems ("Enumerated Items"). "Computer mapping systems" includes the data that mapping software operates upon in addition to the software itself, thus including mapping data such as the OC Landbase within the definition of "computer software."

The parties stipulated the OC Landbase is data and contains no software (Stipulated Fact No. 20, PA-1083 ["The OC Landbase in the format the Sierra Club has requested . . . does not contain [American Heritage Dictionary definition of computer software, see PA-1315].). Therefore the OC Landbase falls outside the software exception and is a public record subject to disclosure if the Court accepts the plain-meaning interpretation. However, if the Court accepts the County's expanded-meaning interpretation as the trial court did (that "software" under section 6254.9(b) really means something more than its plain meaning) then the OC Landbase is software, and not subject to disclosure because it is not a public record The trial court's ruling is erroneous as a matter of law for the reasons discussed below.

a) It is unimportant to the statutory interpretation of section 6254.9 whether section 6254.9(b) is a definition.

The legislative history of Assem. Bill No. 3265 (1987-88 Reg. Sess.) ("AB 3265") – the bill which enacted section 6254.9 – refers several times to "computer software, as defined." (*See, e.g.* Analysis of Assembly Bill 3265 prepared for the Assembly Committee on Governmental Organization, PA at 955). The County has argued because "computer software" is defined in the statute, external definitions do not apply. (*See, e.g.* County of Orange's Opposition to Motion for Additional Briefing at 11:2-5, PA at 778.) This is incorrect for two reasons.

First, the Includes Clause may not in fact be a definition. For example, a court construing "The term 'damages' includes damages for death . . . and damages for loss of use of property. . . ." held this not to be a definition, commenting "The provision states merely that 'damages' includes certain specified items." (*AIU Ins. Co. v. Superior Ct.* (1990) 51 Cal.3d 807, 815.)

Second, a statutory definition, depending on the language and the legislative intent, may supersede the term's common meaning, or may expand or shrink it. Bryan Garner, the editor of Black's Law Dictionary, distinguishes two types of definitions:

> Lexical definitions are like dictionary definitions; they purport to give the entire meaning of a word ("'Litigation' means . . ."). Stipulative definitions, by contrast, rely on the ordinary meaning of the word and merely expand a word's meaning ("'Litigation' includes mediation") or contract a word's meaning ("'Litigation' does not include prefiling investigations"). As an English writer put it in the context of statutes, "when an interpretation clause states that a word or phrase 'means . . . .," any other meaning is excluded, whereas the word 'includes' indicates an extension of the ordinary meaning that continues to apply in appropriate cases." Rupert Cross, *Statutory Interpretation* 103 (1976).

(Garner, A Dictionary of Modern Legal Usage (2d ed. 1995) p. 257, col. 2.) "The statutory definition of a thing as 'including' certain things does not necessarily place thereon a meaning limited to the inclusions." (*Sheppard v. Lightpost Museum Fund* (2006) 146

Cal.App.4th 315, 322-23 [quoting *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 639].)

So either section 6254.9(b) is not a definition – being similar to the "damages includes . . ." provision discussed in *AIU* (*supra*, 51 Cal.3d at page 815.) – or under Cross' rule is a stipulative definition where the Includes Clause expands or provides examples of the common meaning of the term defined, namely "computer software." In either case, the Includes Clause does not restrict the statutory meaning of "computer software" to the specific types of computer software listed in the Enumerated Items.

b) The correct starting point for construing the term "computer software" in section 6254.9(b) is the plain meaning of "computer software," which is "instructions directing the operation of computers."

The common meaning of "computer software" is "the programs, routines, and symbolic languages that control the functioning of the hardware and direct its operation." (American Heritage Dict. (4th ed. 2006) p. 1652, col. 2., PA-1315). This is also the technical meaning of the term (RT at 51:15-22) and was the meaning at the time section 6254.9 was enacted in 1988. (RT at 52:26-53:2.)

The legislature could easily have enacted language saying "computer software means [Enumerated Items]" or "computer software consists of [Enumerated Items]," thus superseding the common meaning of "computer software." But the legislature did not do so. The question of whether the Enumerated Items enlarge

upon the common meaning of "computer software" or whether they are merely an illustrative subset is addressed further below.

But since the common meaning of "computer software" is not superseded in the statutory definition, it provides the starting point for the proper interpretation of section 6254.9. The County conceded this point in the court below. (Orange County Trial Brief at 6:16-18, PA at 1138; Orange County's Opposition to Motion for Additional Briefing at 6:6-8, PA at 773.)

c) The common and technical meanings of "computer software" do not include the data operated upon by the software.

Data means "facts, as in the form of figures, characters or words, especially when given to the computer as input to be stored in machine-readable form." (Dictionary of Computer and Internet Words (Houghton Mifflin 2001) p. 66, attached to this petition as Exhibit 1.) This definition, and the definition of "computer software" quoted just above, make it clear that software and data are two distinct things. Software consists of instructions telling a computer what procedures to follow, and data is a digital representation of facts – in this case of geographical information about the location and shape of parcels of land – that the computer software operates upon to produce a result.

d) Interpreting "computer mapping systems" as including only software does less violence to the expected meanings of terms in section 6254.9(b) than interpreting "computer software" as including data.

As explained above, the primary legal issue in this case is whether the section 6254.9 definition of "computer software" includes the GIS data operated upon by GIS software, also known as "computer mapping systems" software. The choice before the Court is between expanding the common meaning of "computer software" to include this data, or restricting the meaning of "computer mapping systems," as used in the statute, to refer to software only. The former does much less violence to the common meaning of the terms, and is therefore in accordance with the expectations of members of the public attempting to understand the law.

"Computer software," as the term is used commonly, and in the technical community, is never understood to include the data the software operates upon. (*See* definitions quoted above, of "software" at p. 33 and of "data" at p. 34.) And the term "computer mapping systems," as used in the technical community could include software only; software plus hardware; software plus data; or software plus hardware, data and human personnel, since the word "system" is used to mean any of these things. (RT at 67:14-22; Penal Code section 502(5); SOD at 3, note 1, PA at 1349.)

One of the purposes of a statute is to set forth a rule of law that can be properly interpreted and understood by the citizenry. (*See, e.g.* 2A Singer & Singer, Sutherland Statutes and Statutory

Construction section 46:1 (7th ed.), attached to this petition as Exhibit 2.) The primacy of the plain-meaning rule for interpreting statutes is based on this purpose. The legislature is presumed to mean what it says unless what it says is ambiguous. (*Kavanaugh v. West Sonoma County Union High School Dist*. (2003) 29 Cal.4th 911,919.) But definitions so discordant to common usage as to generate confusion should not be used in statutory construction. (Sutherland*, supra,* at section 47:7, attached to this petition as Exhibit 2).

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. Expanding "computer software" to include data does considerable violence to its ordinary meaning, while restricting the meaning of "computer mapping systems" to computer-mapping software only, and not the software plus the data upon which it operates, retains the natural and customary meaning of the terms. The narrow interpretation of section 6254.9(b) called for by the California Constitution can be accomplished by interpreting the statutory text consistently with commonly-understood terms and definitions. This interpretation excludes data from the definition of "computer software."

e) The trial court's determination that the OC Landbase is part of a computer mapping system has no factual basis.

The trial court presents its finding that the OC Landbase is "part of" a computer mapping system as a factual determination. (SOD at 3:12-13, PA at 1349, SOD at 7:19-20, PA at 1353). As discussed above, this is a legal conclusion, not a factual finding.

The SOD provides no more than the bare legal conclusion; it contains no factual determinations on which this legal conclusion could be based. As support for the conclusion, the SOD cites Jelinek's testimony that the OC Landbase constitutes part of a computer mapping system. (SOD at 3:12-13, PA at 1349 citing to RT at 200.) After giving this opinion, OC Counsel asked Jelinek why this was his opinion, and he merely responded that "computer mapping system" was the name formerly used to refer to GIS. (RT at 200.)

The Sierra Club presented evidence that the relationship between GIS software and the GIS data it operates upon is exactly the same as between a photo-processing program such as Photoshop and the digital-image files it processes. (Declaration of Amanda Recinos at 7:13-25, PA at 541.) Photoshop could be considered a "computer graphics systems" within the meaning of section 6254.9(b) because it uses the computer's graphical interface instead of a purely text-based interface. The images this software program processes could be considered "part of" these programs, and therefore "computer software" under the PRA if computer graphics systems" was interpreted the way the trial court interpreted

"computer mapping systems," i.e. as including the data the programs operate upon. This interpretation would include electronic photos in their most common format from disclosure under the PRA. The same argument could be made for Microsoft Word and its document files.

The SOD contains no findings and cites to no evidence showing a more intimate relationship between GIS software and GIS data than exists between other types of software and the data they operate upon. The SOD contains no factual findings at all as to why GIS data should be considered "part of" a computer mapping system. Instead, the SOD uses a superficial definitional syllogism: (1) GIS includes data as well as software; (2) "computer mapping systems" is an old term for GIS; (3) therefore GIS data is "part of" a "computer mapping system." (SOD at 3:2-13, PA at 1349.) This is a legal argument, since it concerns the statutory interpretation of section 6254.9. The SOD contains no facts that bear on this determination.

Since the Sierra Club objected to the court's conclusion that the OC Landbase was "part of" a computer mapping system (Petitioner the Sierra Club's Objections to Proposed Statement of Decision at 2:12-3:10, PA at1340-41.), the Court of Appeal cannot infer a factual basis for the court's legal conclusion. (Code Civ. Proc., section 634; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 ["if omissions or ambiguities in the statement [of decision] are timely brought to the

trial court's attention, the appellate court will not imply findings [of fact] in favor of the prevailing party."].)

Because there is no factual basis for the court's determination that the OC Landbase is "part of" a computer mapping system, that determination is a purely legal conclusion. A more appropriate way to frame the issue is whether "computer mapping systems," as used in section 6254.9, refers to software only, or, in addition, to the data upon which the software operates.

f) The "includes" clause in section 6254.9(b) provides illustrations of types of computer software; it does not enlarge the meaning of "computer software."

The County argues that "includes" is a term of enlargement (*see, e.g.* Orange County Trial Brief at 6:9-10, PA at 1138) and therefore, the Enumerated Items must be enlargements upon the dictionary definition of "computer software." (*Id.* at 6:16-18, PA at 1138.) But a statutory "includes" clause does not necessarily enlarge the meaning of a term. It can limit a definition to the items specifically included (*see, e.g. Coast Oyster Co. v. Perluss* (1963) 218 Cal.App.2d 492, 501) or it can provide examples or illustrations, to ensure those examples are construed as included (*In re Estate of Stoddard* (2004) 115 Cal.App.4th 1118, 1128-1129.)

Enlarging the definition of "computer software" to include computer data, as the County advocates, does violence to the common meaning of the term "computer software" and produces a

result that is out of kilter with the expectations of the public reading the statute.

g) The enumerated terms included in "computer software" should be construed as parallel to one another, and, since they cannot all include the data operated upon by the respective types of software, none of them should include the data operated upon.

"[W]hen a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope." (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1101.) Therefore the terms in the Includes Clause, "computer mapping systems, computer programs, and computer graphics systems" should be construed as parallel, and the word "systems" in "computer graphics systems" should be interpreted the same way as "systems" in "computer mapping systems." In particular, whether the three Enumerated Items refer to software only, or software plus the data operated upon by the software, should be decided uniformly for all three.

Construing all three to include the data they operate upon leads to an absurd result which contradicts the provision of section 6254.9(d) that "nothing in this section is intended to affect the public record status of information merely because it is stored in a computer." This is because construing "computer programs" to include the data they operate upon would include all information stored in computers since computer programs are necessary to conduct any operation upon any computer data. (Declaration of

Bruce Joffe at 7:14-16, PA at 531.) Construing "computer graphics systems" to include the data they operate upon would include all computer data operated upon by programs using a graphical interface such as those found on Microsoft Windows or Apple Macintosh computers, i.e. the vast majority of computer-stored information.

The only way to construe the Enumerated Items in parallel is if they mean software and only software – not data too. Thus, "computer mapping systems" must refer to GIS software only, not GIS data such as the OC Landbase.

h) Conclusion: the best interpretation, based on a holistic reading of section 6254.9, is "computer software," as used in the PRA, retains its common meaning.

Because

(1) the ordinary meaning of "software" is the starting point for interpreting the statutory definition of "computer software" in section 6254.9(b), and this meaning does not include the data operated upon by the software,

(2) the best way to reconcile the meanings of the terms used in section 6254.9(b) so as to do the least violence to the expected meanings of those terms is to interpret them as limited to software, not data, and

(3) interpreting the three Enumerated Items in parallel leads to this same interpretation,

the best interpretation of section 6254.9(b) is that "computer software," "computer mapping systems," "computer programs" and "computer graphics systems" are all limited to software, and do not include the data upon which the software operates.

3. Despite the Trial Court's Dismissive Treatment, the Attorney General's 2005 Opinion Contains an Authoritative Statutory Interpretation of Section 6254.9, Concluding that GIS Parcel Data Does Not Qualify as a Computer Mapping System.

The SOD dismisses the Attorney General's Opinion because it "relied on external definitions of 'computer software' that do not purport to define this term as used in Section 6254.9." (SOD at 9:7-9, PA at 1355) As explained above, it is entirely appropriate to begin the interpretation of section 6254.9 with an external definition of "computer software." The County conceded this point. (Orange County Trial Brief at 6:16-18, PA at 1138; Orange County's Opposition to Motion for Additional Briefing at 6:6-8, PA at 773.)

The Attorney General did not simply disregard the statutory definition of "computer software" in section 6254.9. Instead, the Attorney General analyzed whether "computer mapping systems," as used in section 6254.9(b), refers to or includes GIS parcel data, or rather only refers to software.. (AG Opinion at 8, PA at 179.) In a long paragraph of analysis, the Attorney General points out: (1) the definition of "GIS mapping system" in another Government Code provision – section 51010.5(d) – distinguishes between a GIS "system" and the data it operates upon; (2) various cases show that

"systems" usually refers to software, not data or software plus data; (3) dictionaries do not include data in their definitions of "software." The analysis concludes "parcel map data maintained in an electronic format by a county assessor does not qualify as a 'computer mapping system' under the exemption provisions of section 6254.9." (*Ibid.*)

The Attorney General's opinion lends authority to Petitioner's arguments that the County's position is untenable.

4. It is Impossible to Eliminate Surplusage in Interpreting the Definition of Computer Software in Section 6254.9, so the Interpretative Goal of Eliminating Surplusage Does Not Apply.

The Includes Clause provides, "'computer software' includes computer mapping systems, computer programs and computer graphics systems." (Section 6254.9(b).) The County repeatedly argues that "computer mapping systems," as used in this clause, must include the data operated upon; if "computer mapping systems" does not include data, they argue, the term is superfluous since "computer mapping systems" would just be another type of "computer program." (Orange County Trial Brief at 12:1-23, PA at 1144.)

This argument fails for two reasons. First, if it is true the Includes Clause provides illustrations of types of computer software, the Includes Clause's purpose is to resolve any doubts about whether the Enumerated Items are included in the definition

of computer software. In this case, the fact that the terms have somewhat overlapping meanings does not render them superfluous.

Second, it is impossible to interpret the Enumerated Items in such a way that they do not overlap. If the Includes Clause defines by itself "computer software" or enlarges the dictionary meaning, at least one of the terms is superfluous. The relationship among the technical meanings of the terms is shown in Figure 1. "Computer programs" means the same thing as "computer software." (Computer Dict. (3d ed. 1997) at p. 441, cited by AG Opinion at 8, PA at 179.) Computer mapping systems are necessarily graphical since maps are graphical, so they are included in "computer graphics systems." Computer graphics systems are software systems so they too constitute "computer software." Even if "computer mapping systems" were construed as referring to GIS data in addition to GIS software, the surplusage problem would remain; "computer program" possesses the same meaning as "computer software," and is thus surplusage. Similarly, "computer graphics system" is a type of computer software, so inclusion of this term in the list of Enumerated Items is also superfluous.

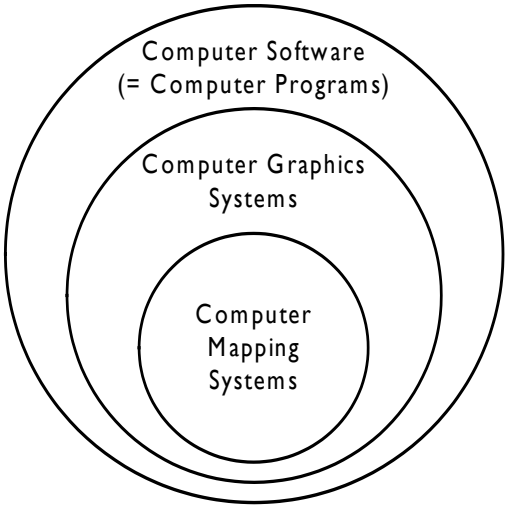

Figure 1

In conclusion, the terms overlap and the trial court's determination that "computer mapping systems" means data plus software does not resolve the purported problem. The "problem" disappears with the correct interpretation: That the Enumerated Items are merely examples of "computer software" rather than definitions in their own right.

5. Legislative History Demonstrates Data and Databases Were Not Intended to Fall Within the Computer Software Exception.

The trial court erroneously held,

> [s]ection 6254.9's legislative history indicates that it was designed to protect computer mapping systems from disclosure, including the data component of such systems, and to authorize public agencies to recoup the costs of developing and maintaining computer mapping systems by selling, leasing, or licensing the system.

(SOD at 11:14-17, PA at 1357.) This reading of the legislative history is simply wrong and not supportable as discussed further below.

a) The original version of section 6254.9 excluded "proprietary information" from disclosure, but this was quickly amended to remove the term and supplant it with the term "computer software," thus indicating the concern was proprietary software and not data.

Section 6254.9 was added to the Public Records Act in 1988 by AB 3265 (Legislative History of AB 3265 ("Leg. Hist."), PA at 1075-80.) The bill was sponsored by the City of San Jose (Leg. Hist., PA at 955), which had developed a system called the Automated Mapping System ("AMS"). (*Id.*, PA at 986.) This system consisted of

"computer readable databases, computer programs, computer graphics systems and other computer stored information" (*Ibid.*) San Jose sponsored AB 3265 in order to protect this software and data from disclosure under the PRA (*Id.*, PA at 986-87.)

As introduced on February 11, 1988, the bill excluded from PRA disclosure "proprietary information," which was defined to include "computer readable data bases, computer programs, and computer graphics systems." (Leg. Hist., PA at 942.) Upon introduction, the bill was immediately amended in the Assembly to apply to "computer software" instead of "proprietary information." However, the definition of "computer software" in the amended version was the same as the definition of "proprietary information" in the original version. (Leg. Hist., PA at 944.)

b) The Senate amended the bill to remove computer databases from the computer software exception in response to objections from the Dept. of Finance.

On April 28, 1988, the California Department of Finance submitted a Bill Analysis opposing AB 3265. (Leg. Hist., PA at 1020-21.) Among the reasons for opposing the legislation was:

> The definition of computer software in (c) includes data bases. The inclusion of data bases in paragraph (c) is contradictory to the intent expressed in paragraph (b) since the records maintained in data bases are organized files of record information subject to public record laws. In addition, the inclusion of information data bases in the definition of computer software makes them subject to sale, licensing or rental which is contrary to the Section 6250 and 6252(d) (e) of the Government Code.

(*Ibid.)* In the version analyzed by the Dept. of Finance (as amended April 4, 1988, PA at 943-44.), paragraph (b) read "Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer" and paragraph (c) read "As used in this section, 'computer software' includes computer readable data bases, computer programs and computer graphics systems." (*Ibid.*)

The Dept. of Finance also objected that "the bill would permit the State to sell, license or lease computer software or data bases which it maintained but did not own" and "the bill does not protect the State from warranty liability inferred by the sale or license of computer software." (Leg. Hist., PA at 1020.)

On June 9 and June 15, 1988, the Senate amended the bill (Leg. Hist., PA at 946-47). The amendments all corresponded in detail to the objections made by the Dept. of Finance. The Senate responded to the objection concerning selling, licensing or leasing computer software or databases which it maintained but did not own by deleting "or maintained" from "Computer software developed or maintained by a state or local agency is not itself a public record under this chapter." (*Ibid.*) It responded to the Dept. of Finance's objection concerning warranty liability by adding subsection (c): "This section shall not be construed to create an implied warranty . . . ." (*Ibid.*) And the Senate responded to the Dept. of Finance's objection concerning the conflict between subsections (b) and (c) by

changing "computer readable data bases" to "computer mapping systems." (*Id.*, PA at 947.) This change, made in response to the Dept. of Finance's objection that the inclusion of databases in the definition of "computer software" ran counter to the provision that public records stored in computers were subject to disclosure, shows that the Senate intended to exclude computer databases from the definition of "computer software."

All three changes the Senate made in the June amendments correspond closely to the Dept. of Finance objections, indicating that the Senate's purpose in amending the statute was to deal with the problems in the proposed statutory text pointed out by the Dept. of Finance. Thus, this legislative history demonstrates the legislature did not intend "computer software" as that term is used in section 6254.9 to include databases. The OC Landbase is a database. Therefore the legislature did not intend the OC Landbase to be excepted from disclosure.

Further evidence for this is provided by the fact that the Dept. of Finance changed its position from opposed to neutral on June 9, 1988; one day after the Senate made the first amendment. (Leg. Hist. PA at 1033.) The text as amended by the Senate on June 15, 1988 was the version passed by both houses and signed by the Governor. (Leg. Hist., PA at 1028, 953.)

c) San Jose wanted, but did not get, a provision exempting computer databases from PRA disclosure.

San Jose wanted an amendment that would exclude its parcel database as well as its custom-developed mapping software from PRA disclosure (Leg. Hist., PA at 986), but the Senate changed the proposed bill to except only the software from disclosure, not San Jose's parcel database. (Leg. Hist., PA at 1028.)

6. Interpreting Section 6254.9 in the Context of the Entire Act Shows a Legislative Intent that All Types of Computer Databases, Including GIS Data, be Subject to Disclosure.

Section 6253.9, adopted by the Legislature in 2000, requires agencies to provide information in electronic form if it is requested in that form. It repealed the provision, formerly in section 6256, allowing agencies discretion to provide requested records in paper form, even if the agency held them in electronic form.

In this case, the trial court would have been correct in ruling "Section 6254.9, subdivision (d), does not state that a computer formatted version of a public record must be disclosed without the payment of licensing fees" (SOD at 10:19-20, PA at 1356) if this was 1999, prior to the adoption of section 6253.9. But this is 2010 and the trial court is wrong.. As discussed above, prior to the enactment of section 6253.9, an agency could exercise its discretion to effectively exempt computer data from disclosure. The agency could reply to a request for computer data the same way Orange County has done in this case, by saying "we won't give you the computer data file,

which would take us five minutes to copy onto a CD. Instead, we'll give you several million pages of printouts containing the same information, and you'll have to pay per-page copying charges," thus effectively frustrating the public records request. Avoiding this scenario was one of the primary purposes behind the adoption of section 6253.9, as made clear in its legislative history. (*See* Legislative History of AB 2799, attached to Request for Judicial Notice filed concurrently with this petition at RJN1-0005.)

Taken together, section 6253.9, which requires agencies to provide computer data in the requested electronic format if it is available in that format, and section 6254.9(d), which mandates "[p]ublic records stored in a computer shall be disclosed as require by [the PRA]" demonstrate an overall legislative policy of disclosure of computer data under the PRA. The Section 6250 general declaration announcing "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state" and the constitutional requirement that section 6254.9 be narrowly construed, bolsters this position. The PRA as a whole evinces a strong policy in favor of disclosure of electronic public records; another powerful indicator favoring the interpretation of section 6254.9's computer-software exception as applying to computer software only, *not* electronic data such as the OC Landbase

E. Disclosure of the OC Landbase Furthers the PRA's Public Policy.

1. The Policy of Providing Maximal Public Access to Public Records is Furthered by Disclosure of the OC Landbase.

> In enacting this chapter [the PRA], 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.

(Preamble to the PRA, section 6250.) The PRA "was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies." (*Filarsky v. Superior Court* (2002), 28 Cal.45th 419, 425-26.) This purpose must be kept in mind when interpreting Act.

a) The PRA's text demonstrates it is intended to apply broadly to all types of computer information.

Two provisions show the PRA is intended to apply broadly to computer information. First is section 6252(e), which defines a public record as: "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." This obviously includes all information maintained in a computer.

The second is section 6253.1(a)(2), which requires public agencies to assist a person with making a focused and effective request for public records by describing the information technology in which the records exist. This implies the PRA requires disclosure of

computer records maintained using every type of computer technology, including GIS technology.

The PRA requires agencies to provide copies of computer databases they maintain, unless they contain exempt data. This requirement is more and more important as public agencies maintain more and more of their records in computer databases, rather than in paper files. Allowing agencies to deny public access to computer data will surely frustrate the PRA's policy as computer generated information becomes ubiquitous.

b) Compilations of data such as the OC Landbase are especially important public records, so the Act's disclosure policy should be vigorously enforced.

Compilations of data are organized concentrations of information more helpful than the raw data upon which they are based. A computerized accounting system, for example, contains records of individual transactions organized by date and account so that balance sheets, income statements, and other summary reports may be readily generated. The data may be queried in many ways for summary or analysis purposes. For example, a report showing all payments made in amounts over $1,000 from a particular account for a particular time period would be easy to call up. A member of the public who obtained an agency's accounting data file could use her own accounting software to query the database in the ways just described.

For such purposes, this accounting database file would be much more valuable than copies of all the records – e.g., cancelled checks, invoices, credit-card slips, bills – input to the system, precisely because the database is organized in a fashion that makes analysis effective and efficient.. Querying, analyzing and summarizing the data from the original paper records would be impracticable and wasteful.[3]

The situation with the OC Landbase is analogous. The original land records – records of survey, tract maps, lot-line adjustments, deeds, and so forth – amount to millions of pages. (Declaration of Amanda Recinos at 4:9, PA at 538.) If provided with a copy of the OC Landbase, the Sierra Club could, using its own GIS software, display, analyze and query the data in many ways, some of which would be useful in monitoring the activities of the county government. For example, the Sierra Club could generate a map showing ranges of assessed value per square foot of land in different colors, to look for patterns of assessment favoring certain types of property owners. Compiling such a map from the original paper property records would be impractical and wasteful for the same reason that compiling an agency department's income and expense

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[3] In addition, many records and information now collected into databases are originated on computers and never see the light of day on paper. For example, an electronic invoice could be sent via email and paid over a computer by linking a bank transaction over the internet, avoiding the need for transmission of paper altogether.

statement for a given year from the original accounting transaction documents would be impractical and wasteful.

The County argues that Petitioner wishes to exploit the "functionality" of the OC Landbase, (Orange County Trial Brief at 15:6-9, PA at 1147), implying the OC Landbase possesses functionality like software. This is wrong. Petitioner seeks not the functionality but the *organization of the data*. Each record contained in the OC Landbase for each parcel of land contains a specific set of fields of information, e.g. APN, street address, parcel boundaries. The OC Landbase's organization as a table of uniform records gives it its power and usefulness.

The importance of data compilations such as the OC Landbase is evident from the County's GIS Needs Assessment Study. (GIS Needs Assessment Study, a small portion of which is attached to the Request for Judicial Notice filed concurrently with this petition as Exhibit 2, at OC 1455, [the OC Landbase is "the most essential data set in the county."].) Its importance is underscored by the fact many County departments, including the board of supervisors, executive management, OC Parks, PC Public Works, OC Engineering and OC Planning and Development Services make use of the OC Landbase. (*Id.* at OC 1029.)

This "most essential data set in the county" is the primary data source used by county officials and employees to obtain information about land parcels within the county. If it is the "most essential data

set" for government, it is also the "most essential data" set to the public and should therefore be accessible via the PRA.

2. Extending the Software Exception to GIS Data Could Result in the Exclusion of All Computer Data from Disclosure

a) The PRA applies to databases, which are vital public records.

As discussed above, provisions in the PRA, including:

- section 6252(e)'s broad definition of "public records,"
- section 6253.9's requirement that computer data be disclosed in electronic format, and
- section 6254.9(d)'s mandate that computer-stored records be disclosed,

evidence the legislature's intent to apply the PRA to computer databases. These databases, as organized compilations of information, are vitally important public records.

b) The day is approaching when most databases maintained by government will contain GIS data.

Many data elements contained in databases refer, directly or indirectly, to a geographical location. For example, addresses, buildings, departments, business names, streets, rivers, cities, facilities such as drains, telephone poles and electric meters all may be referenced by location. Adding a location reference to data about any of these things is called "geocoding."(*See* definition of "geocode" in ESRI ArcGIS Information Center Glossary, attached to

this petition as Exhibit 3.) The location may be expressed as a latitude and longitude or equivalent geographical coordinate pair.

As GIS technology becomes more widely used, , there is a trend in governments at all levels to geocode as much data as possible, so that information can be analyzed spatially. For example, geocoding complaints received by a department makes it easy to use GIS software to prepare a map showing the locations of the incidents complained about.

The County is planning to geocode their databases, "[Once the appropriate geocoding data is set up, E]xisting data residing in other databases countywide can then be geocoded to their actual location." (GIS Needs Assessment Study, attached to the Request for Judicial Notice filed concurrently with this petition as Exhibit 2, at OC 1460.) "The other IT systems should use the address point layer to populate their address tables and validate address data entry." (Id. at OC 1461.)

This process will spread GIS data into other databases which, under the trial court's interpretation of section 6254.9, will then become "computer mapping systems" excluded from PRA disclosure. The OC Landbase is a table of parcel information containing several items of textual information for each parcel plus one item of GIS information: the parcel boundaries. (RT at 139:7-141:4, RT at 145:19-147:6.) If just the textual items were present in the database for each parcel, there would be no dispute that the OC

Landbase is an ordinary database subject to PRA disclosure. Under the trial court's interpretation of section 6254.9, the addition of the single GIS parcel-boundary data element to each parcel's record makes the entire OC Landbase "part of a computer mapping system."

This slippery-slope interpretation will render any database containing address information part of a "computer mapping system," and thus "computer software" and thus excepted from disclosure.

c) If mapping data is excluded from PRA disclosure because it is "part of" a computer mapping system, other data could be excluded because it is "part of" a computer graphics system or a computer program.

As discussed above, the three Enumerated Items in section 6254.9(b), computer mapping systems, computer programs, and computer graphics systems, should be interpreted in parallel. If the trial court's interpretation of this section, that the OC Landbase is excluded from disclosure because it is "part of" a computer mapping system, is allowed to stand, it will pose a line-drawing problem with respect to the other two Enumerated Items.

A Microsoft Word .doc file could be considered "part of" a computer graphics system, since the MS Word computer program allows the user to edit the document using a graphical display showing the document as it will appear when printed. Virtually all programs running on personal computers now use graphical user interfaces (GUIs), and the computer data they manipulate and

display are "part of" the overall system in exactly the same way that the OC Landbase is "part of" Orange County's computer mapping system.

A parallel construction applied to the third Enumerated Item, "computer programs," would extend the computer-software exception to all computer data, since computer programs are the only way that computer data can be created and manipulated.

This would be an absurd result, contrary to the intention of the legislature that enacted section 6254.9, and contrary to the policies behind and the purposes of the PRA. This Court should decline to accept Orange County's invitation to start down that slippery slope.

d) The public has paid for the compilation of the OC Landbase data, and has a right to use it.

The public has paid, through its taxes, for the Orange County government to compile the OC Landbase. The public has a right to use this data without paying again.

Part of the purpose of the PRA is to democratize access to public records. The current system, under which Orange County charges $375,000 for a copy of the OC Landbase (*See* OCGIS Fee Schedule, cost for 600,001 to 700,000+ parcels, one-time fee, at PA-400.), creates a two-tiered system of access, where title companies and rich real-estate developers have access because they can afford the hefty fees, and ordinary citizens, newspapers, and non-profit groups can't afford to buy access. This is against the spirit, intent and policy of the PRA.

F. Conclusion

This court should hold that "computer software," as defined in Gov. Code section 6254.9(b) refers to software only, and does not include any type of data, because:

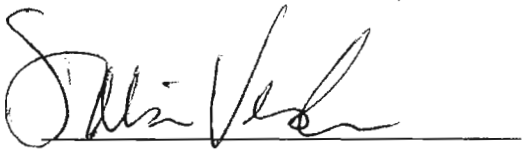
- this is the best plain-language interpretation of the statutory text, since it does the least violence to the ordinary meaning of terms used in the statute and accords best with the expectations of the public in interpreting this section;
- this interpretation fits best with the purposes and provisions of the Public Records Act;
- the legislative history demonstrates the legislature deliberately removed "computer readable databases" from section 6254.9's software exception;
- this interpretation accords best with the policies of governmental openness contained in the California Constitution;
- all previous California authority, including the Attorney General's Opinion and Court of Appeal's Opinion in *Santa Clara*, supports this position.

Petitioners respectfully request that this Court issue a writ of mandate directing the Orange County Superior Court to vacate its ruling in this matter and grant the Sierra Club's petition for a writ of mandate ordering Orange County to provide the Sierra Club with an electronic copy of the OC Landbase in the format requested by Petitioner, for the direct cost of making the copy.

mandate ordering Orange County to provide the Sierra Club with an electronic copy of the OC Landbase in the format requested by Petitioner, for the direct cost of making the copy.

Dated: August 25, 2010

Respectfully submitted,
VENSKUS & ASSOCIATES, P.C.



by Sabrina D. Venskus,
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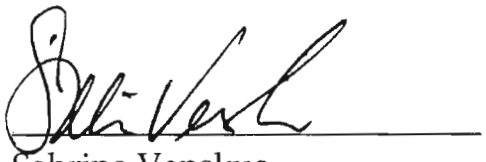
Certificate of Compliance

Counsel of record hereby certifies that pursuant to Rule of Court 8.204(c)(1) the attached Respondent's Brief was produced on a computer and contains 13,433 words, not including this certificate or the tables of contents and authorities. Counsel relies on the word count of the Microsoft Word computer program used to prepare this brief.

Dated: August 25, 2010 Respectfully Submitted,



Sabrina Venskus
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Exhibit 1

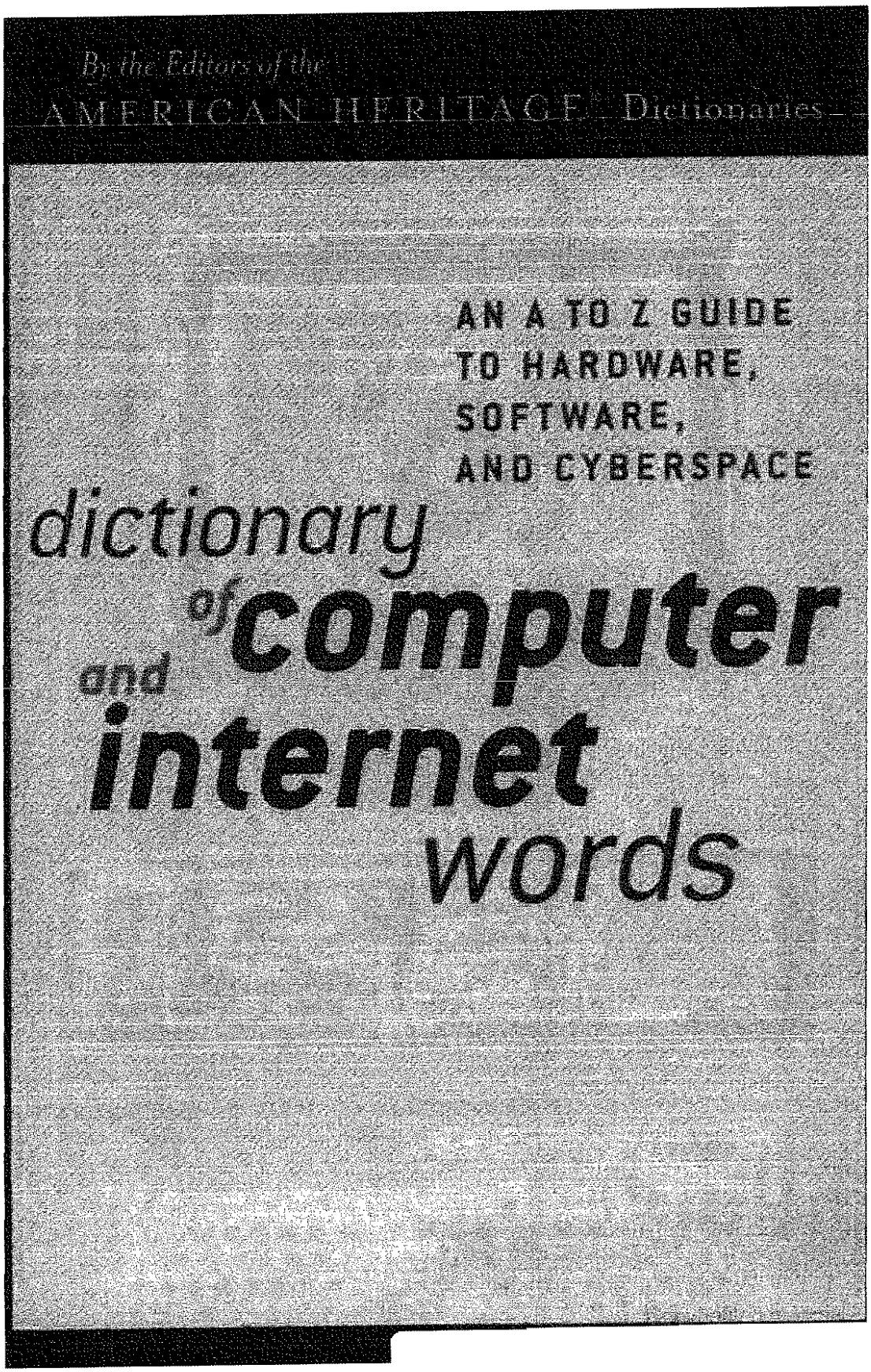
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Exhibit 35

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[D]

DA *Abbreviation of* **desk accessory.**

DAC *Abbreviation of* **digital-to-analog converter.**

daemon A program or process that sits idle in the background until it is invoked to perform its task. For example, a printer spooling program on Unix is a daemon that waits for a request to print a file.

daisy chain A set of hardware devices that are linked in a series.

daisywheel printer An impact printer that produces characters that look typewritten. Instead of a row of typewriter bars that strike the paper, the bars are arranged as spokes around a hub, called a daisywheel. During the printing process, the daisywheel spins around to the proper character and strikes it against a ribbon, imprinting the character on the paper. *See table at* **printer.**

DARPA *Abbreviation of* **Defense Advance Research Projects Agency.** *See* **ARPA.**

DASD [dee-ay-ess-DEE or DAZZ-dee] *Abbreviation of* **direct access storage device.** A storage device, such as a CD-ROM, that is capable of accessing information directly instead of having to read through all of the data on the device sequentially, as is the case with storage on magnetic tape.

DAT *Abbreviation of* **digital audio tape.** A storage medium that uses magnetic tape to store data digitally. A DAT cartridge is smaller than a 3.5-inch floppy disk and can hold from 700 megabytes to 2.3 gigabytes. Because DATs allow only sequential access, they are often used for backups. *See table following* **access time.**

data Facts, as in the form of figures, characters, or words, especially when given to the computer as input to be stored in machine-readable form. When you type words or numbers into a database, for example, the computer stores this as data in binary form. The word *data* is actually the plural form of *datum*, which means *a single fact*, but *data* has taken on a life of its own. This means that you can treat it as a plural out of respect to its origins or as a singular in deference to its independence.

database An organized collection of information that can be searched, retrieved, changed, and sorted using a collection of programs known as a database management system. Many databases are organized into records consisting of data that have been input

Exhibit 2

Sutherland Statutes and Statutory Construction
Database updated June 2010

Norman J. Singer and J.D. Shambie Singer

Part
V. Statutory Interpretation
Subpart
A. Principles and Policies
Chapter
46. Literal Interpretation

References

§ 46:1. The plain meaning rule

A basic insight about the process of communication was given classic expression by the Supreme Court of the United States when it declared that "the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, … the sole function of the courts is to enforce it according to its terms."[1] This generally means when the language of the statute is clear and not unreasonable or illogical in its operation, the court may not go outside the statute to give it a different meaning.[2] The court disclaimed that it was engaged in the process of interpretation when it decided what the statute "plainly" meant. It said "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." The reviewing court should give full effect to and follow the plain meaning of the statute whenever possible.[3]

What has come to be known as the plain meaning rule has been given expression in a variety of ways:[4] "When the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction."[5] "It is not allowable to interpret what has no need of interpretation."[6] "There is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses."[7] "The … rule … assumes that the words of the statute have the same meaning to those who authored it and to those who read it."[8] "The court considers the language of an enactment in its natural and ordinary signification, and if there is no ambiguity or obscurity in the language, there is usually no need to look elsewhere to ascertain intent."[9] Courts may only look beyond the plain language of a statute if the statute's language is ambiguous, applying it according to its plain meaning would lead to an absurd result, or there is clear evidence of contrary legislative intent.[9.50] "Where the words of the statute are clear and free from ambiguity, the letter of the statute may not be disregarded under the pretext of pursuing its spirit."[10] In the absence of a specific indication to the contrary, words used in the statute will be given their common, ordinary and accepted meaning, and the plain language of the statute should be afforded its plain meaning.[11] "The intent of the authors of legislation is gleaned from what is said, not from what they may have intended to say."[12] The rules of statutory construction favor according statutes with their plain and obvious meaning, and therefore one must assume that the legislature knew the plain and ordinary meanings of the words it chose to include in the statute.[13] It has also been noted by a Missouri court that simply because a

civil statute is penal in nature does not convert it into a criminal statute and subject it to all the requirements of criminal law; rather, the court must give effect to the plain meaning of the words used in such a statute to insure that the purpose of the statute is carried out.[14]

The above statements cannot be taken at face value since parties litigate the issue of meaning all the way to a court of last resort.[15] For example, the Alaska courts have stated that "Alaska no longer adheres to a plain meaning rule."[16] Some courts, especially Alaska, do not follow the strict plain meaning rule, but apply instead a sliding scale approach that allows them to depart even from the plainly worded statutory language if its history convincingly shows a legislative intent to adopt a different meaning.[17] Nevertheless, it is also stated that where a statute's meaning appears clear and unambiguous, the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent.[18] In many instances, expressions of the plain meaning rule represent an attempt to reinforce confidence in an interpretation arrived at on other grounds. This is exemplified when a court defends an interpretation it has decided upon with the argument that if the legislature had intended otherwise it would have said so.[19] However, the plain meaning rule coincides with a high degree of literalism in the court's approach to the process of interpretation which emphasizes the importance of the legislative text. A court may speak of the plain meaning of the language of an act as being the best evidence of legislative intent. Actually, the plain meaning rule may be more consistent with an interpretation of what the statute means to persons affected by it.[20]

One who questions the application of the plain meaning rule to a provision of an act must show either that some other section of the act expands or restricts its meaning, that the provision itself is repugnant to the general purview of the act, or that the act considered in pari materia with other acts,[21] or with the legislative history of the subject matter, imports a different meaning.[22] Unless the defendants can demonstrate that the natural and customary import of the statute's language is either repugnant to the general purview of the act or for some other compelling reason should be disregarded, the court must give effect to the statute's plain meaning.[23]

Additionally, even if the words of the statute are plain and unambiguous on their face the court may still look to the legislative history in construing the statute if the plain meaning of the words of the statute is a variance with the policy of the statute or if there is a clearly expressed legislative intention contrary to the language of the statute.[24]

If the language is plain, unambiguous and uncontrolled by other parts of the act or other acts upon the same subject the court cannot give it a different meaning. But the customary meaning of words will be disregarded when it is obvious from the act itself that the legislature intended that they be used in a sense different from their common meaning.[25]

However, there is authority for applying the plain meaning rule even though it produces a harsh or unjust result or a mistaken policy as long as the result is not absurd.[26] In the absence of compelling reasons to hold otherwise, courts assume the plain and ordinary meaning of the statute was intended by the legislature.[27] The fact that the words in a statute have not been used before does not mean that they are ambiguous or unclear. The words should be given their common and approved usage.[28] This is also true when a custom which may have been followed for a long time is involved.[29] Courts are not free to read unwarranted meanings into an unambiguous statute even to support a supposedly desirable policy not effectuated by the act as written.[30]

[FN1] Please refer to Appendix A to this Chapter, for an extensive list of supporting law review and re-

lated support for, and discussion of, the proposition stated in the text at note 1.

United States. Caminetti v. U.S., 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917). Cf. Barnhart v. Walton, 535 U.S. 212, 122 S. Ct. 1265, 152 L. Ed. 2d 330, 79 Soc. Sec. Rep. Serv. 1 (2002); Brastex Corp. v. Allen Intern., Inc., 702 F.2d 326 (2d Cir. 1983); U.S. v. Pennsylvania Environmental Hearing Bd., 584 F.2d 1273, 8 Envtl. L. Rep. 20689 (3d Cir. 1978); Medical Center Pharmacy v. Mukasey, 536 F.3d 383 (5th Cir. 2008); Professional Lawn Care Ass'n v. Village of Milford, 909 F.2d 929, 31 Env't. Rep. Cas. (BNA) 1825, 20 Envtl. L. Rep. 21245 (6th Cir. 1990) (abrogated on other grounds by, Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532, 33 Env't. Rep. Cas. (BNA) 1265, 21 Envtl. L. Rep. 21127 (1991)) and cert. granted, judgment vacated on other grounds, 501 U.S. 1246, 111 S. Ct. 2880, 115 L. Ed. 2d 1046, 33 Env't. Rep. Cas. (BNA) 1324 (1991); McBarron v. S & T Industries, Inc., 771 F.2d 94, 6 Employee Benefits Cas. (BNA) 2051 (6th Cir. 1985) ; Smith v. Zachary, 255 F.3d 446 (7th Cir. 2001); State of Ill. by Illinois Dept. of Public Aid v. Bowen, 808 F.2d 571, 36 Ed. Law Rep. 1128 (7th Cir. 1986); In re Kagenveama, 541 F.3d 868, 59 Collier Bankr. Cas. 2d (MB) 1677 (9th Cir. 2008); U.S. v. Behnezhad, 907 F.2d 896 (9th Cir. 1990) (abrogated on other grounds by, Johnson v. U.S., 529 U.S. 694, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000)); Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157, 196 U.S.P.Q. 97 (9th Cir. 1977); Hoechst Aktiengesellschaft v. Quigg, 917 F.2d 522, 16 U.S.P.Q.2d 1549 (Fed. Cir. 1990); Reid v. Department of Commerce, 793 F.2d 277 (Fed. Cir. 1986); Palestine Information Office v. Shultz, 674 F. Supp. 910 (D.D.C. 1987), decision aff'd, 853 F.2d 932 (D.C. Cir. 1988); Keenan v. Washington Metropolitan Area Transit Authority, 643 F. Supp. 324 (D.D.C. 1986); Bautista v. Star Cruises, 286 F. Supp. 2d 1352, 2003 A.M.C. 2832 (S.D. Fla. 2003), aff'd, 396 F.3d 1289, 2005 A.M.C. 372 (11th Cir. 2005); Guarantee Elec. Co. v. Big Rivers Elec. Corp., 669 F. Supp. 1371 (W.D. Ky. 1987); NNDJ, Inc. v. Comerica Inc., 584 F. Supp. 2d 957, 67 U.C.C. Rep. Serv. 2d 982 (E.D. Mich. 2008); DirecTV, Inc. v. Karpinsky, 269 F. Supp. 2d 918, R.I.C.O. Bus. Disp. Guide (CCH) P 10516 (E.D. Mich. 2003), order vacated in part on reconsideration, 274 F. Supp. 2d 918 (E.D. Mich. 2003); Teel v. American Steel Foundries, 529 F. Supp. 337, 10 Fed. R. Evid. Serv. 70, 33 U.C.C. Rep. Serv. 42 (E.D. Mo. 1981); McClary v. Erie Engine & Mfg. Co., 856 F. Supp. 52 (D.N.H. 1994); Brooklyn Bridge Park Coalition v. Port Authority of New York and New Jersey, 951 F. Supp. 383, 44 Env't. Rep. Cas. (BNA) 1209, 27 Envtl. L. Rep. 20788 (E.D. N.Y. 1997); U.S. v. Revis, 22 F. Supp. 2d 1242 (N.D. Okla. 1998); U.S. v. Revis, 22 F. Supp. 2d 1242 (N.D. Okla. 1998); Matter of Cox, 10 Vet. App. 361 (1997), as amended, (Sept. 4, 1997) and vacated on other grounds, 149 F.3d 1360 (Fed. Cir. 1998); Brooks v. Brown, 5 Vet. App. 484 (1993), aff'd, 26 F.3d 141 (Fed. Cir. 1994); Adair v. U.S., 70 Fed. Cl. 65 (2006), aff'd on other grounds, 497 F.3d 1244, 26 I.E.R. Cas. (BNA) 1014 (Fed. Cir. 2007); Skillo v. U.S., 68 Fed. Cl. 734, 2006-1 U.S. Tax Cas. (CCH) P 50140, 96 A.F.T.R.2d 2005-7231 (2005) ; Navajo Refining Co., L.P. v. U.S., 58 Fed. Cl. 200 (2003); Shoshone Indian Tribe of Wind River Reservation, Wyoming v. U.S., 51 Fed. Cl. 60, 163 O.G.R. 241 (2001), aff'd, 364 F.3d 1339, 163 O.G.R. 259 (Fed. Cir. 2004); Schlumberger Technology Corp. and Subsidiaries v. U.S., 47 Fed. Cl. 298, 2000-2 U.S. Tax Cas. (CCH) P 50664, 2000-2 U.S. Tax Cas. (CCH) P 70152, 86 A.F.T.R.2d 2000-5585 (2000) ; Coconut Grove Entertainment, Inc. v. U.S., 46 Fed. Cl. 249 (2000); Chaney v. U.S., 45 Fed. Cl. 309, 84 A.F.T.R.2d 99-7137 (1999).

If language of a statute reasonably covers a situation, the statute applies irrespective of whether the legislature ever contemplated that specific application. Sears, Roebuck & Co. v. U. S., 62 C.C.P.A. 10, 504 F.2d 1400 (1974).

Sutherland Statutes and Statutory Construction
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Part
V. Statutory Interpretation
Subpart
A. Principles and Policies
Chapter
47. Intrinsic Aids

References

§ 47:7. Definition provisions

It is not unusual for statutes to contain definitions of the terms used in them. Statutory definitions may appear either in separate sections, or in the body of substantive sections.[1] It is commonly understood that such definitions establish meaning where the terms appear in that same act, or in the case of general interpretative statutes, the definitions extend to as much legislation as the general act itself designates.[2] As a rule, a definition which declares what a term means is binding upon the court.[3] Limitations have been noted. For example, if the definition is arbitrary, creates obvious incongruities in the statute, defeats a major purpose of the legislation or is so discordant to common usage as to generate confusion, it should not be used.[4] A Texas court of criminal appeals has taken the rule to the point where it held that statutes outside the Penal Code may be looked to in ascertaining the definition of an offense and to give meaning to language that appears in criminal statutes.[5]

A Washington court held that a dissembled firearm that can be rendered operational with a reasonable effort and within a reasonable time is a "firearm" within the meaning of the statute defining firearm for the purposes of possession offenses.[6]

Legislative declaration of the meaning that a term shall have in the same or other acts is binding, so long as the prescribed meaning is not so discordant to common usage as to generate confusion.[7] However, definitions themselves are often not clear and may be subject to interpretation.[7.50]

If there is an ambiguity in a definition as there was in the terms "serious health condition" as used in the Family and Medical Leave Act a court is allowed to look at legislative history to determine what Congress intended as possible serious health conditions.[8] Under the District of Columbia marriage statute, the definition of "marriage" does not include same-sex unions.[9] The phrase "total applicable credit," under a statute providing for the reduction of a prison sentence for a prisoner who successfully completes certain educational programs, is not limited to credit time for good behavior, includes both educational credit time and credit time for good behavior.[10] The use of dictionary definitions is appropriate in interpreting undefined statutory terms, but recourse to a dictionary is unnecessary if the legislative intent may be readily discerned from reading the statute.[11] The

definition of person in the Dictionary Act, which supplies definitions of certain terms when they are undefined in a stature, does not apply when the context of the statute indicates that Congress intends another meaning.[12] The existence of alternative dictionary definitions of a word, each making some sense under the statute, indicates that the statute is open to interpretation and the word is ambiguous as between the several meanings.[13] Generally, the court construes words and phrases according to common and approved usage, and if necessary, may consult a dictionary. However, such reliance on a dictionary does not mean that the statute is ambiguous.[14]

In order to avoid repugnance with other parts of the act and conflict with legislative intent, the words may be restricted or expanded by the subject matter.[15] When the definition of a word varies from the accepted legislative intent, the intent of the legislature is followed.[16] For example, the game and fish laws' definition of "firearm" as a "gun that discharges shot or a projectile by means of an explosive, a gas or compressed air" was properly applied in determining the meaning of "firearm" in a drive-by shooting statute which did not define that term; accordingly, a BB gun was a firearm for purposes of the drive-by shooting statute.[17] The propriety of construing the words is obvious for all parts of an act should be in harmony with the intent of the act. The words of the statute furnish the best means of its own exposition and if the intent of the act is clearly ascertainable from a reading of its provisions and all its parts may be brought into harmony with that intent, resort to other aids of construction is not necessary.[17.10]

A term whose statutory definition declares what it "includes" is more susceptible to extension of meaning by construction than where the definition declares what a term "means." It has been said "the word 'includes' is usually a term of enlargement, and not of limitation. … It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated. … "[18] The use of the word "includes" as a term of enlargement allowed a court to construe the definition of "corporation" to include a labor union for purposes of bankruptcy.[19]

A definition which declares what a term "means," excludes any meaning that is not stated.[20] If a word that should be defined in a statute is not, then its commonly accepted meaning is applied.[21] Yet it has also been held that a meaning cannot be applied which was not in existence on the law's effective date.[22]

In a burglary statute the failure to define "dwelling house" allowed the court to presume that the legislature intended to incorporate the common-law definition.[23] In the absence of a definition in a statute of a word or phrase, a definition used in a similar legal context may be employed.[23.5] A Texas court held that the word "prostitution" is defined by its commonly understood definition and it cannot be held to be vague.[24]

If it is expected that a particular term would be defined in the body of the statute, but is not, then the word will be assumed to have its ordinary and popularly understood meaning.[25] Undefined terms which are ambiguous should be defined by reference to an examination of the scope, history, context, subject matter, and purpose of the statute in order to determine the legislative intent.[26] In a statute where the word "any" was used the court found that it has a diversity of meanings and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute.[27] Verbs can be important in defining behavior that can be considered criminal. However, the "verb test" has value as an interpretive tool, it cannot be applied rigidly to the exclusion of other relevant statutory language because it might limit the nature of the interpretation.[28]

In cases of doubt, prior definitions may be helpful in determining legislative intent.[29] The dictionary is an

acceptable source for determining the meaning of a word.[30] In like manner where the legislature has chosen to define two terms in a statute differently, they cannot be used interchangeably.[31] Where the legislature has failed to provide a more comprehensive definition of a statutory term after a judicial decision, its inaction indicated legislative acquiescence in the judicial definition.[32]

[FN1] **Illinois.** An administrative rule incorporating a statutory definition. Northern Illinois Auto. Wreckers and Rebuilders Ass'n v. Dixon, 75 Ill. 2d 53, 25 Ill. Dec. 664, 387 N.E.2d 320 (1979).

South Carolina. Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 552 S.E.2d 42 (Ct. App. 2001).

Broida, A Guide to Merit Systems Protection Board Law & Practice, Subjects of Bargaining: Specific Applications of Negotiability Determinations; Pay, Premiums and Allowances; Pay for Employees of Particular Agencies Ch. 6, XIV, F, 7 (1997); Saint-Amour, Is It Consistent or Not Inconsistent? The Question Remains Unanswered Following Washington State Department of Transportation v. Washington Natural Gas Co, 7 Vill Envtl L J 401 (1996).

[FN2] **United States.** Robinson v. Shell Oil Co., 70 F.3d 325, 69 Fair Empl. Prac. Cas. (BNA) 522, 67 Empl. Prac. Dec. (CCH) P 43811 (4th Cir. 1995), decision rev'd on other grounds, 519 U.S. 337, 117 S. Ct. 843, 136 L. Ed. 2d 808, 72 Fair Empl. Prac. Cas. (BNA) 1856, 69 Empl. Prac. Dec. (CCH) P 44493 (1997); National Wildlife Federation v. Gorsuch, 693 F.2d 156, 18 Env't. Rep. Cas. (BNA) 1105, 13 Envtl. L. Rep. 20015 (D.C. Cir. 1982); U.S. ex rel. Graber v. City of New York, 8 F. Supp. 2d 343 (S.D. N.Y. 1998).

Where it is stated that when there is an express exception to a statute no other exceptions will be implied. U.S. v. Pornes-Garcia, 171 F.3d 142 (2d Cir. 1999); Colorado Public Interest Research Group, Inc. v. Train, 507 F.2d 743, 7 Env't. Rep. Cas. (BNA) 1177, 5 Envtl. L. Rep. 20043 (10th Cir. 1974), judgment rev'd on other grounds, 426 U.S. 1, 96 S. Ct. 1938, 48 L. Ed. 2d 434, 8 Env't. Rep. Cas. (BNA) 2057, 6 Envtl. L. Rep. 20549 (1976).

The federal government is not a person, within the meaning of the Dictionary Act section defining the term person. U.S. v. Brownfield, 130 F. Supp. 2d 1177 (C.D. Cal. 2001).

Arkansas. Bird v. Pan Western Corp., 261 Ark. 56, 546 S.W.2d 417 (1977).

Colorado. In determining a particular definition for a term capable of more than one meaning, the court seeks to further the intent underlying the statutory or constitutional provision in question by considering the object to be accomplished and the mischief to be avoided. City of Durango v. Durango Transp., Inc., 807 P.2d 1152 (Colo. 1991).

Florida. Nicholson v. State, 600 So. 2d 1101 (Fla. 1992).

Idaho. Maguire v. Yanke, 99 Idaho 829, 590 P.2d 85 (1978).

Illinois. United Consumers Club, Inc. v. Attorney General, 119 Ill. App. 3d 701, 75 Ill. Dec. 35, 456 N.E.2d 856 (1st Dist. 1983).

Exhibit 3

ArcGIS® 9

What is ArcGIS 9.3?

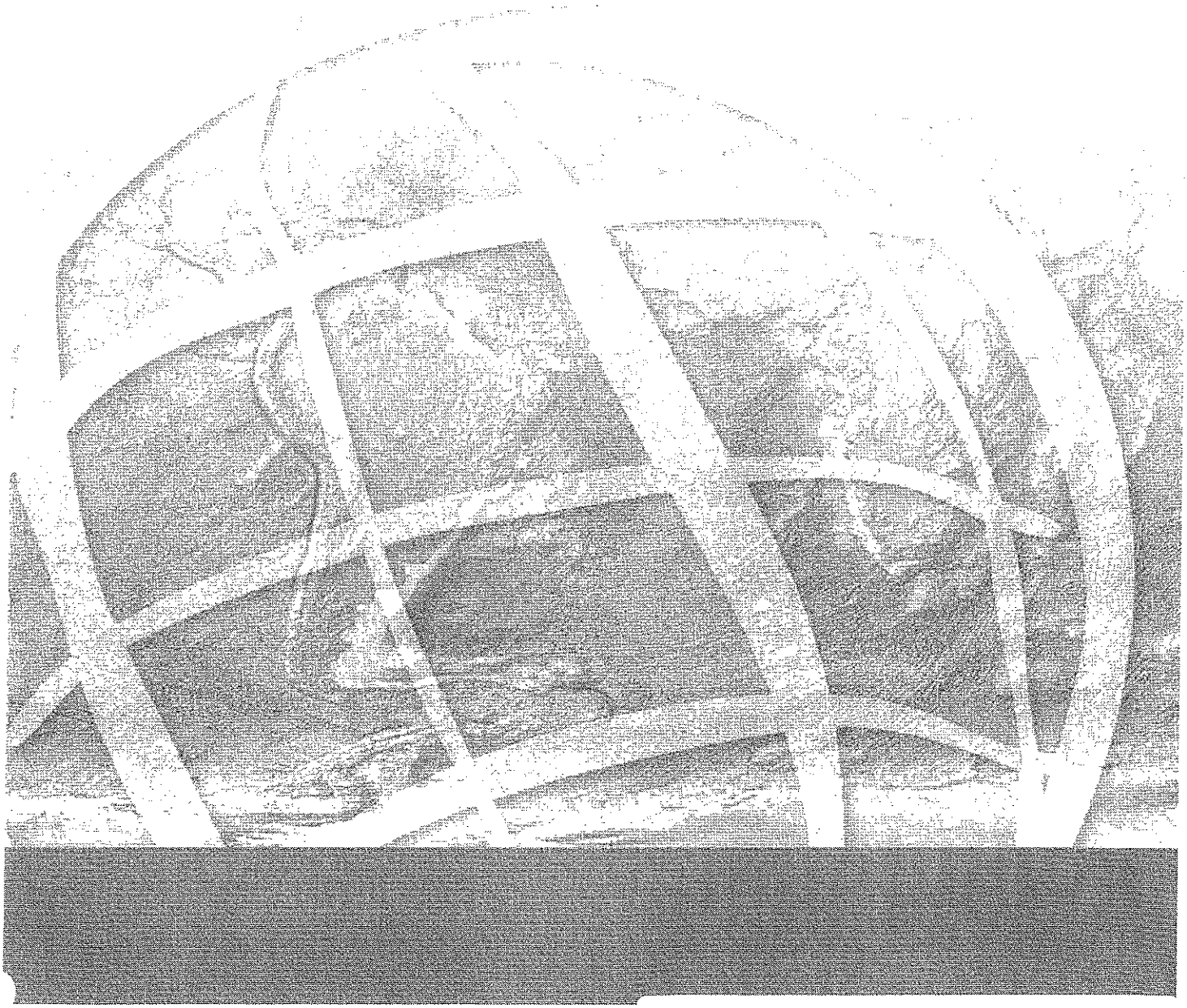

Exhibit 31

Glossary

analysis

The process of identifying a question or issue to be addressed, modeling the issue, investigating model results, interpreting the results, reaching a conclusion, and possibly making a recommendation.

annotation

1. In ArcGIS, text or graphics on a map that can be individually selected, positioned, and modified by the software user. The text may represent either feature attributes or supplementary information. Annotation may be manually entered by the user or generated from labels. Annotation is stored either in a map document as text or graphic elements, or in a geodatabase as a feature class.
2. A feature class type in the geodatabase.

ArcIMS

ArcIMS stands for Arc Internet Map Server, ESRI software that allows for centrally hosting and serving GIS maps, data, and mapping applications as Web services. The administrative framework allows users to author configuration files, publish services, design Web pages, and administer ArcIMS spatial servers. ArcIMS supports Windows, Linux, and UNIX platforms and is customizable on many levels.

ArcSDE

Software technology in ArcGIS that provides a gateway for storing, managing, and using spatial data in one of the following relational database management systems: IBM DB2 UDB, IBM Informix, Microsoft SQL Server, Oracle, and PostgreSQL. Common ArcSDE client applications include ArcGIS Desktop, ArcGIS Server, ArcGIS Engine, and ArcIMS.

ArcToolbox

A user interface in ArcGIS used for accessing and organizing a collection of geoprocessing tools, models, and scripts. ArcToolbox and ModelBuilder are used in concert to perform geoprocessing.

attribute

1. Information about a geographic feature in a GIS, usually stored in a table and linked to the feature by a unique identifier. For example, attributes of a river reach might include its name, length, and average depth.
2. In raster datasets, information associated with each unique value of raster cells.
3. Cartographic information that specifies how features are displayed and labeled on a map; the cartographic attributes of a river might include line thickness, line length, color, and font.

attribute key

See primary key.

CAD

See computer-aided drafting (CAD).

CAD dataset

A CAD drawing file that contains graphic elements and drawing attributes. ArcGIS supports many CAD formats including DWG (AutoCAD), DXF (AutoDesk Drawing Exchange Format), and DGN (the default MicroStation file format).

cartography

The art, science, and knowledge of expressing graphically, usually through maps, the natural and human features of the earth.

check-in

The procedure that transfers a copy of data into a master geodatabase, updating the original portion of the dataset, and enabling it so it can be saved and accessed by other users.

checkout

The procedure that copies a subset of data from one geodatabase to another and enables the copy of the original data to be edited remotely. Eventually, the remote edits can be posted back to the original geodatabase using check-in.

checkout geodatabase

Any geodatabase that contains checked-out data from a master geodatabase.

checkout version

The data version created in a checkout geodatabase when data is checked out to that database. This version is created as a copy of the synchronization version. Only the edits made to this checkout version can be checked back in to the master geodatabase.

computer-aided drafting (CAD)

A system for the design, drafting, and display of graphically oriented information often used in architecture, engineering, and manufacturing. Also known as computer-aided design. GIS and CAD users exchange data for a host of uses and collaborations.

coverage

1. A data model for storing geographic features using ArcInfo Workstation. A coverage stores a set of thematically associated data that is considered a unit. It usually represents a single layer, such as soils, streams, roads, or land use. In a coverage, features are stored as both primary features (points, arcs, polygons) and secondary features (tics, links, annotation). Feature attributes are described and stored independently in feature attribute tables.
2. A complete coverage of map information, usually raster data, in the OGC Web Coverage Service (WCS).

data

Any collection of related facts arranged in a particular format; often, the basic elements of information that are produced, stored, or processed by a computer.

database management system (DBMS)

A set of computer programs that organizes the information in a database according to a conceptual schema and provides tools for data input, verification, storage, modification, and retrieval.

data model

1. In GIS, a mathematical paradigm for representing geographic objects or surfaces as data. The vector data model represents geography as collections of points, lines, and polygons; the raster data model represents geography as cell matrices that store numeric values; the TIN data model represents geography as sets of contiguous, nonoverlapping triangles.
2. In ArcGIS, a set of database design specifications for objects in a GIS application. A data model describes the thematic layers used in the application (for example, counties, roads, and hamburger stands); their spatial representation (for example, point, line, or polygon); their attributes; their integrity rules and relationships (for example, streets cannot self-intersect, or counties must nest within states); their cartographic portrayal; and their metadata requirements.
3. In information theory, a description of the rules by which data is defined, organized, queried, and updated within an information system (usually a database management software program).

dataset

Any organized collection of data with a common theme.

DBMS

See database management system (DBMS).

DEM

See digital elevation model (DEM).

digital elevation model (DEM)

The representation of continuous elevation values over a topographic surface by a regular array of z-values, referenced to a common datum. Typically used to represent terrain relief.

digital terrain model (DTM)

See digital elevation model (DEM).

disconnected editing

The process of checking out data from another geodatabase (usually a subset of the data), editing that data, then merging the changes back into the source or master geodatabase using check-in.

domain

In geodatabases, the set of valid values or ranges of values for an attribute field.

enterprise geodatabase

A centralized geographic database (often managed using a series of federated or distributed copies) that supports an organization's objectives and goals. Enterprise geodatabases are typically multiuser and transactional and are managed in a DBMS using ArcSDE.

enterprise GIS

An integrated, multidepartmental system for collecting, organizing, analyzing, visualizing, managing, and disseminating geographic information. It is intended to address both the collective and the individual needs of an organization and to make geographic information and services available to GIS and non-GIS professionals.

Extensible Markup Language (XML)

Developed by the World Wide Web Consortium (W3C), XML is a standard for designing text formats that facilitate the interchange of data between computer applications (for example, across the Web). XML is a set of rules for creating standard information formats using customized tags and sharing both the format and the data across applications.

feature class

A collection of a common type of geographic feature (for example, wells, roads, or address locations) with the same geometry type (such as point, line, or polygon), the same attribute fields, and the same spatial reference. Feature classes can stand alone within a geodatabase or be contained within a feature dataset. Feature classes allow homogeneous features to be grouped into a single unit for data storage and use. For example, highways, primary roads, and secondary roads can be grouped into a line feature class named roads. In a geodatabase, there are seven feature class types: Point, Line, Polygon, Annotation, Multipoints (to hold lidar and bathymetry observations), Multipatches (to hold 3D shapes), and Dimensions (a specialized type of annotation). External GIS datasets, such as CAD files, OGC GML files, and MapInfo files, are accessed as feature classes in ArcGIS.

feature dataset

A collection of related feature classes stored together that share the same spatial reference; that is, they have the same coordinate system. Feature datasets are used to organize feature classes that participate together in a topology, a network, or a terrain dataset.

GDB

See geodatabase (GDB).

geocoding

The process of finding the location of a street address on a map. The derived location can be an x,y coordinate or a feature such as a street segment, postal delivery location, or building. In GIS, geocoding requires a reference dataset that contains address attributes for the geographic features in the area of interest. The geodatabase contains a data type to support geocoding called an Address Locator.

geodatabase (GDB)

A collection of geographic datasets of various types held in a common file system folder, a Microsoft Access database file, or in a multiuser relational database (such as Oracle, Microsoft SQL Server, IBM DB2, PostgreSQL, or Informix). The geodatabase is the native data structure used in ArcGIS and is the primary format used for editing and data management.

geodatabase data model

The schema for the various geographic datasets and tables in an instance of a geodatabase. The schema defines the GIS objects, rules, and relationships used to add GIS behavior and integrity, and to model the spatial relationships of the datasets in a collection.

geodataset

Any GIS-based dataset.

geographic data

Information about real-world features, including their shapes, locations, and descriptions. Geographic data is the composite of spatial data and attribute data.

geographic database

See geodatabase (GDB).

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Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.	
Case Name: Sierra Club v. Superior Court of Orange County Court of Appeal Case Number: Superior Court Case Number: 0-2009-00121878-CU-WM-CJC	

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My ☑ residence ☐ business address is *(specify):*
   10211 Sunland Blvd., Shadow Hills, CA 91040

3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b):* Petition for Extraordinary Writ Pursuant to California Public Records Act; Petitioner's Appendix Vols. 1-5; Reporter's Transcript

   a. ☐ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

         (b) ☐ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

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      (3) The envelope was or envelopes were addressed as follows:

         (a) Person served:
            (i) Name:
            (ii) Address:

         (b) Person served:
            (i) Name:
            (ii) Address:

         (c) Person served:
            (i) Name:
            (ii) Address:

         ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from *(city and state):*

CASE NAME: Sierra Club v. Superior Court of Orange County	CASE NUMBER:

3. b. [✓] **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Orange County Counsel

(b) Address where delivered:

333 West Santa Ana Boulevard, Suite 407
Santa Ana, CA 92702

(c) Date delivered: August 27, 2010

(d) Time delivered: 11:15 AM

(2) Person served:

(a) Name: Clerk, Superior Court of the County of Orange, Dept. C-18

(b) Address where delivered:

700 Civic Center Drive West
Santa Ana, CA 90702

(c) Date delivered: August 27, 2010

(d) Time delivered: 11:00 AM

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

[ ] Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 27, 2010

Dean Wallraff
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ [signature]
(SIGNATURE OF PERSON COMPLETING THIS FORM)