Supreme Court Case No. S194708
4th App. Dist., Div. Three, Case No. G044138

COPY

**IN THE SUPREME COURT**
**OF THE STATE OF CALIFORNIA**

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SIERRA CLUB,

*Petitioner*

vs.

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

*Respondent.*

COUNTY OF ORANGE.

*Real Party in Interest.*



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After a Decision By The Court of Appeal
Fourth Appellate District, Division Three

Appeal from Orange County Superior Court
Case No. 30-2009-00121878
Hon. James J. Di Cesare

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# ANSWER OF REAL PARTY IN INTEREST COUNTY OF ORANGE TO PETITION FOR REVIEW

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NICHOLAS S. CHRISOS, COUNTY COUNSEL
Mark D. Servino, Senior Deputy (SBN 186941)
Rebecca S. Leeds, Deputy (SBN 221930)
333 West Santa Ana Boulevard, Suite 407
Santa Ana, California 92701
Telephone: (714) 834-3300
Facsimile: (714) 834-2359

Attorneys for Real Party In Interest
County of Orange

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## INTRODUCTION

This case is not about the denial of access to information, but whether the information must be produced in a specific format, i.e., in a geographic information system ("GIS") file format that can be read by a computer mapping system. The trial court found that the County agreed to produce non-GIS formatted records that contain the same information sought by the Sierra Club. This factual finding was not challenged.

In a well reasoned opinion, the Court of Appeal properly framed the issue as whether the California Public Records Act ("CPRA") requires a government agency to produce the database associated with a GIS in a GIS file format pursuant to Government Code section 6254.9[1] at the cost of duplication. (See Slip Opn., p. 3.) The Court of Appeal specifically examined whether Section 6254.9's "computer mapping systems" exemption includes a GIS database like the one maintained by the County. (Slip Opn., p. 13.)

The Sierra Club attempts to recast the issue as a question of whether an unspecified "computer software exclusion" exempts "non-software computer data" from disclosure, which mischaracterizes the plain language of the exclusion for computer mapping systems found in Section 6254.9. The Sierra Club primarily contends that the Court of Appeal's decision conflicts with the decision in *Santa Clara v. Superior Court of Santa Clara County* (2009) 170 Cal.App.4th 1301 (hereinafter "*Santa Clara*"). There is no conflict. The *Santa Clara* decision expressly declined to address the computer mapping system exemption.

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

Accordingly, because Petitioner has not shown why this Court should grant review under Rule 8.500, the Petition should be denied.

## STATEMENT OF THE CASE[2]

The record sought by the Sierra Club is the "OC Landbase," i.e., "the County's parcel geographic data in a GIS file format." (Slip Opn., p. 3.) "GIS" stands for "geographic information system." (*Ibid.*) A geographic information system is "an integrated collection of computer software and data used to view and manage information about geographical places, analyze spatial relationships, and model spatial processes." (*Id.* at p. 5.) "'GIS file format' means that the geographic data can be analyzed, viewed, and managed with GIS software." (*Id.* at p. 3.)

The County distributes the OC Landbase in a GIS file format to members of the public if they pay a licensing fee and agree to a license. (*Id.* at p. 4.) The GIS license revenue accounts for 26 percent of the County's cost to keep the OC Landbase up to date. (*Id.* at p. 5; 5 PA 1350.)

The County agreed to produce non-GIS formatted records to the Sierra Club without any license fee. (Slip Opn., p. 4; 5 PA 1350.) These records contained the same information stored in the OC Landbase and include copies of source documents containing parcel related information (such as assessment rolls and transfer deeds) "in Adobe PDF electronic format or printed out as paper copies," rather than in a GIS file format. (*Ibid.*) However, the "Sierra Club cannot use the analytical, display and manipulation functions of its GIS software on the OC Landbase if the

[2] We agree with the facts stated in the Court of Appeal's opinion, which we summarize here for the Court's convenience, supplemented with a few additional details. All citations to the Court of Appeal's opinion are to its final decision.

County produces [the information] in Adobe PDF format or printed out on paper." (Slip Opn., p. 4.)

The Sierra Club asked the trial court to issue a writ of mandate "compelling the County to provide the OC Landbase in a GIS file format to the Sierra Club for a fee consisting of only the direct costs of [duplication], and with no requirement that the Sierra Club execute a non-disclosure or other agreement with the County." (Slip Opn., p. 4.) Before ruling, the trial court heard oral argument, allowed extensive briefing, and conducted a two-day evidentiary hearing. (*Id.* at p. 5.) The trial court issued a written statement of decision denying the Sierra Club's petition. (5 PA 1362.) The Sierra Club filed a petition for an extraordinary writ seeking review of the trial court's decision with the Court of Appeal. In a published opinion filed on May 31, 2011, the Court of Appeal affirmed the decision of the trial court and denied the petition for an extraordinary writ. (Slip. Opn., p. 3.) The Sierra Club seeks review of that decision.

## ARGUMENT

### I. THE COURT OF APPEAL'S DECISION DOES NOT CONFLICT WITH THE *SANTA CLARA* DECISION

The Sierra Club contends that the Court of Appeal's decision conflicts with the Sixth Appellate District's decision in *Santa Clara v. Superior Court of Santa Clara County* (2009) 170 Cal.App.4th 1301. To the contrary, the Court's of Appeal's decision is consistent with that opinion. Writing for the court, Justice Ikola acknowledges that the *Santa Clara* decision expressly declined to consider the exemption for computer mapping systems found in Section 6254.9. (Slip Opn., p. 18, citing *Santa Clara, supra*, 170 Cal.App.4th at p.1322, fn.7.)

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The *Santa Clara* decision examined whether the designation of Santa Clara's GIS basemap as protected critical infrastructure information (PCII) pursuant to the Critical Infrastructure Information Act of 2002 (CII Act) precluded the disclosure of the basemap. (*Santa Clara, supra,* 170 Cal.App.4th at p. 1321.) The respondent in *Santa Clara* asserted that withholding the GIS Basemap was necessary to prevent a terrorist attack. (*Id.* at p. 1328.) *Amici curiae* in *Santa Clara* attempted to address Section 6254.9's computer mapping system exemption. (*Id.* at p. 1312, fn. 4 and p. 1322, fn. 7.) However, the court in *Santa Clara* expressly declined to consider this exemption:

> In this court, by contrast, the County's *amici curiae* urge an additional exemption, based on section 6254.9, which the County argued unsuccessfully below. Under that section, computer software—defined to include computer mapping systems—is not treated as a public record. (§ 6254.9, subds. (a), (b).)
>
> Since the point is raised only by *amici curiae*, we need not and do not consider it. "Amici curiae must take the case as they find it. Interjecting new issues at this point is inappropriate." [cites omitted] We therefore decline to address the exemption issue raised solely by the County's *amici curiae* here.

(*Id.* at p. 1322, fn. 7 [emphasis added].) Unlike the respondent in *Santa Clara*, the County's arguments are not based on national security, Section 6255's catchall exemption, or copyright, but on the exemption for computer mapping systems found in Section 6254.9.

Instead of a conflict, the Court of Appeal's decision expressly agrees with *Santa Clara* in noting that "the appellate court there declined to consider whether Santa Clara County's GIS basemap was a computer mapping system excluded from disclosure under section 6254.9 because the

issue was raised only by Santa Clara County's amici curiae." (Slip Opn., p. 18.) Section 6254.9's computer mapping system exemption is the sole issue in this case. Thus, the Court of Appeal decision and *Santa Clara* do not conflict and review is not warranted.

## II. THE PETITION SHOULD BE DENIED BECAUSE IT MISREPRESENTS THE FACTS AS FOUND BY THE TRIAL COURT AND ACCEPTED BY THE COURT OF APPEAL

The rules governing petitions for review provide that the Supreme Court "will accept the Court of Appeal opinion's statement of the issues and facts," aside from any alleged omissions or misstatements raised in a petition for rehearing. (Cal. Rules of Court, rule 8.500(c)(2).) The Sierra Club's Petition for Review ignores this rule. Instead of relating facts as found by the trial court and affirmed by the Court of Appeal, the Petition introduces new allegations of fact and anecdotal references regarding alleged admissions by the County, the use of GIS by third parties, and the alleged GIS activities of the State, which are not based on the Court of Appeal's decision or the record on appeal. (See Petition 3-7, 9, 17 and 19.) The Sierra Club did not argue before the Court of Appeal that the trial court's factual findings were not supported by substantial evidence or that evidence was improperly excluded. Thus, this eleventh-hour effort to introduce evidence outside of the record fails to demonstrate that review is necessary to secure uniformity of decision or to settle an important question of law. (Cal. Rules of Court, rule 8.500(b)(1).)

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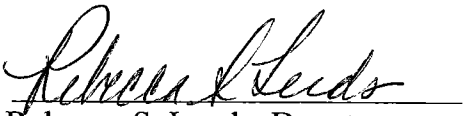
## CONCLUSION

The Sierra Club's Petition does not raise an unsettled legal issue. Rather, it attempts to manufacture disagreement among the districts where there is none, and seeks Legislative action from this Court due to its disagreement with the result mandated by the statutory scheme. The result sought by Sierra Club would undermine established law and statutory norms. Accordingly, as there is no basis for review, the Petition for Review should be denied.

Dated: July 28, 2011

NICHOLAS S. CHRISOS,
COUNTY COUNSEL
MARK D. SERVINO,
SENIOR DEPUTY
REBECCA S. LEEDS, DEPUTY

By: 
Rebecca S. Leeds, Deputy
Attorneys for Real Party In Interest
County of Orange

## CERTIFICATE OF WORD COUNT

I certify that this brief contains 1,482 words, not including tables or this certificate, according to the word count function of the word-processing program used to produce the brief. Therefore, the number of words in the brief complies with the requirements of California Rules of Court Rule 8.204(c)(1).

By: Rebecca S. Leeds
Rebecca S. Leeds

## PROOF OF SERVICE

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

On July 28, 2011, I served the following document **ANSWER TO PETITION FOR REVIEW** on all other parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

[x] (BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for 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 United States Postal Service in a sealed envelope with postage fully prepaid.

[] (BY UNITED PARCEL SERVICE (UPS)) I placed such envelope(s) addressed as shown below for collection and delivery by UPS with delivery fees paid or provided for in accordance with this office's practice. I am readily familiar with this office's practice for processing correspondence for delivery the following day by UPS.

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

July 28, 2011

Anthony Lievanos

### NAMES AND ADDRESSES TO WHOM SERVICE WAS MADE

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|---|---|
| Sabrina D. Venskus, Esq.<br>Dean Wallruff, Esq.<br>Venskus & Associates, P.C.<br>21 S. California St., Ste. 204<br>Ventura, CA 93001<br>Fax No. 213 482-4246 | Attorneys for Petitioner |
| Clerk of Court<br>Court of Appeal, Fourth Appellate Dist., Div. 3<br>601 W. Santa Ana Blvd.<br>Santa Ana, CA 92702<br>Fax No. 714 664-0897 | |
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|---|---|
| Clerk of Court, on behalf of<br>Honorable James J. Di Cesare,<br>Dept. C-18<br>Superior Court of the State of<br>California<br>County of Orange, Central Justice<br>Center<br>700 Civic Center Drive West<br>Santa Ana, CA 92701 | |