

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE**

SIERRA CLUB,

Petitioner,

v.

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

Respondent.

COUNTY OF ORANGE,

Real Party in Interest.

Case No. G044138

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

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF PETITIONER AND APPELLANT SIERRA CLUB;
BRIEF OF AMICUS CURIAE**

Petition from a statutory writ following an Order of the Superior Court
of the State of California, in and for the County of Orange, The
Honorable James J. Di Cesare, Judge

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

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rule 8.208**

Court of Appeal Case Number: G044138


Case Name: Sierra Club v. Superior Court of the County of Orange

Please check the applicable box:

- There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208 (d)(3).
- Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Dated: January 13, 2011



Michael W. Stamp (SBN 72785)
Molly Erickson (SBN 253198)
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Attorneys for Amicus Curiae
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**TO THE HONORABLE PRESIDING JUSTICE OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE
DISTRICT, DIVISION THREE:**

Pursuant to California Rules of Court, rule 8.520, subdivision (f), The Open Monterey Project, an unincorporated nonprofit association, respectfully requests permission to file the accompanying amicus curiae brief in support of Petitioner Sierra Club. This application is timely made in compliance with the briefing schedule set by this Court on November 17, 2010. No party or any counsel for any party in the pending appeal authorized any part of this brief or made any monetary contributions to fund the preparation or submission of the brief. No person or entity made any contribution other than the amicus curiae, its members or its counsel.

THE AMICUS CURIAE'S INTEREST

This application is submitted on behalf of The Open Monterey Project, an unincorporated nonprofit association active in environmental and open government matters in Monterey County and throughout California.

The Open Monterey Project was established in 2002. It has been a frequent public commentator on the administrative processes of local and regional hearings, applications, and projects. It has

worked on its own and with other community groups in securing public access to public records, in enforcing the California Public Records Act, and in improving the quality and effectiveness of public participation in environmental planning. It has been active in the trial courts and in the appellate courts in litigation enforcing the California Environmental Quality Act (CEQA), and has taken a leading role in promoting the California Public Records Act (CPRA) in several cases and in public educational efforts.

The Open Monterey Project was a prevailing party in *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677 (CEQA case), *Preserve Our Valley v. County of Monterey* (Sept. 21, 2006, H029243 [nonpub. opn.]) (CEQA case), and *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379 (Public Records Act case arising from CEQA matter). Petitioner submitted an amicus curiae brief on behalf of prevailing parties in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 (CEQA case), and in other environmental cases.

The Open Monterey Project's very recent experience with GIS data and the CPRA includes attempts to obtain a GIS shapefile map of specific tax assessment boundaries in Monterey County. The tax is for a water project. The Open Monterey Project made public

records requests to the County for the GIS map. The county initially withheld the information, then stated that it would print a paper copy of all assessor's parcel numbers used to create the GIS boundary map. More than a month after the initial request, the county complied with the CPRA and produced a CD of all the assessor's parcel numbers used to create the GIS map.

In other situations, the GIS data and the draft or final Environmental Impact Report (EIR) for a project are related, and the GIS information is necessary to allow property owners, businesses, and the public to understand and verify information in the EIR. While the EIR preparer utilizes the county's data, everyone else is denied the ability to verify or dispute the essential data. Once the EIR is certified, it is too late to make the corrections that would have been made if the GIS data had been made available to the public.

The County of Monterey staff has indicated that the outcome of the present case is likely to affect Monterey County's future actions regarding GIS data. Our understanding is that counties across the state are following this case in this Court.

The Open Monterey Project recognizes that the Court of Appeal's decision in *Sierra Club v. Superior Court* is likely to have a direct and immediate effect upon access to public records that are

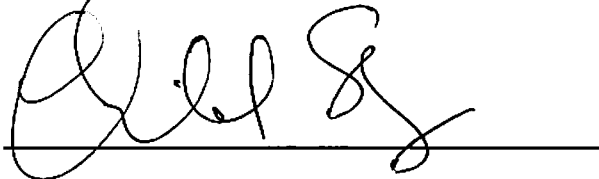
utilized by public agencies in making vital governmental decisions.

The case before this Court will significantly affect the ability of residents, citizen groups, businesses, and small organizations to effectively participate in the processes of local governmental decisionmaking. The outcome of the case is likely to have an impact upon when and how the public is entitled to participate, under what circumstances, and how vital the CPRA remains. The interests at stake are at the center of the purposes and goals of The Open Monterey Project.

The perspective of The Open Monterey Project on the important issues of public participation in local government is helpful for the Court to consider. Counsel is familiar with the issues and briefing in this case. Additional briefing is helpful to fully present these issues. Therefore, we respectfully request that this Court grant leave to allow the filing of the accompanying amicus curiae brief.

January 13, 2011

LAW OFFICES OF MICHAEL W. STAMP

A handwritten signature in black ink, appearing to read "Michael W. Stamp", is written over a horizontal line.

Michael W. Stamp
Molly Erickson

Attorneys for Amicus Curiae
The Open Monterey Project

AMICUS CURIAE BRIEF

A. Overview of the Public Records Act and the Constitution.

The California Public Records Act (Gov. Code, §§ 6250 et seq.) was adopted in 1968 and is aimed at widening the public's access to public records. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1335.) The Act is a powerful tool for the democratic process. The public's right to information is not limited to the records the agency chooses to present at public workshops or at public meetings. The CPRA records help to explain the actions of the agency, provide public transparency, and promote the agency's independent judgment on critical decisionmaking.

The California Public Records Act allows the public to review all records that the public agency possesses, owns, uses or retains. (Gov. Code, § 6252, subd. (e).) For example, timely CPRA requests can identify the sources of information or analysis that end up in a draft environmental impact report, or project approval of a major development, opening the door to questions about the assumptions, rationales or information relief upon by local governments in their decisionmaking. The public's ability to help local governments make accurate and fully-informed decisions frequently requires that the public be provided with timely, inexpensive access to the data by the

government.

When the agency withholds public records, including data relied upon by local agencies for decisionmaking, there is no accountability or verification of accuracy prior to project approval. The data relied upon by the local agency is believed without public review and verification, and the public process becomes unpredictable and uncertain. Transparency is diminished, oversight and accountability are impaired and the public's ability to participate in essential decisions is lessened unduly.

The California Constitution guarantees that access to government information is a fundamental right. (Calif. Const., art. 1, sec. 3(b); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750.) The principal effects of this Constitutional provision are to elevate the right of access to records to Constitutional status, and to guide the Court to its narrow construction of exemptions under the CPRA.

The CPRA "favors disclosure." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652.) Ambiguities are resolved in favor of disclosure. (*South Coast Newspapers, Inc. v. City of Oceanside* (1984) 160 Cal.App.3d 261, 270.)

Exemptions are narrowly construed, both by the CPRA and by

the California Constitution's explicit direction. (*Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420; Cal. Const., art. 1, sec. 3(b)(2).) As Sierra Club points out in the present case, the narrow interpretation of exemptions called for by the Constitution can be accomplished by interpreting the statutory text consistently with commonly-understood terms and definitions. This interpretation properly excludes data from the definition of "computer software." (Petitioner's Writ, p. 36.)

"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, supra*, 42 Cal.3d at 651, fns. omitted; Gov. Code, § 6250.)

B. The Public Records In This Case.

Petitioner Sierra Club seeks an electronic copy of the OC Landbase of Orange County. The OC Landbase contains a set of data items for each of the over 640,000 legal parcels of land in Orange County. (Petitioner's Writ, p. 4.)

The information requested by Petitioner is data. Data is information. No more, no less. All of the information in the OC Landbase is publicly available information which is used daily by

several Orange County departments to make land use and future planning decisions. (Petitioner's Writ, p. 6.)

The OC Landbase records are vital public records that allow the public to verify the accuracy of maps, summaries, reports and other documents prepared by the County. The Landbase is a searchable compilation that the user can easily review without the tediousness of researching individual parcels.

Without access to the data contained in the OC Landbase, the public's only access to the information is through inspection and copying of hundreds of thousands of paper pages of data. This alternative is realistically impossible to use or pay for. The public's ability to meaningfully participate in public review of projects in the County is thwarted. Decisionmakers are no longer accountable to the public for many of their decisions to approve projects because the data underlying their decisions cannot be reviewed and verified by the public.

C. Orange County Effectively Denied Access to the Information.

Public agencies often have short deadlines and time frames for the public to respond to or consider public agency actions. It would be unreasonable and unmanageable for a member of the public to obtain, review and analyze millions of paper pages of data

in any reasonable time frame prior to government action on a project.

The County holds the OC Landbase in electronic format which could be delivered in a single DVD. (Petitioner's Reply, p. 26-27.)

The County already provides the database to other agencies electronically. (Petitioner's Writ, p. 21.) The County should provide the database to the public in that same format. (Gov. Code, § 6253.9.) This would reduce the expense and use of the limited government resources of the County to produce the data to the public and would comply with the CPRA.

Without access to the OC Landbase in electronic format, members of the public are at a disadvantage. For example, it is not unusual to have a map simplified for decisionmakers to an extent that the individual data used to create the map is impossible to discern and understand by looking solely at the map. This may result in a loss of accuracy. Access to the underlying data is essential to understanding the data and verifying the accuracy of the government's claims.

D. The Public Records Sought Here Are Not Exempt. They Are Records of Public Information Relied Upon by the Local Government for Planning and Essential Decisionmaking. The Records Have Independent Public Value in Ensuring Accountability and Promoting Participation in the Democratic Process.

The data in the OC Landbase is considered the most essential data set in the County. (Petitioner's Writ, p. 6.) Because of this wide applicability and extensive use, the OC Landbase is one of the most important public records maintained by Orange County.

(Petitioner's Writ, p. 6.)

The value of these records to the public comes from the information they contain, and the light that they would shine on critical governmental decisions. These records have intrinsic public value in a democratic society. They inform the electorate.

Allowing the County to decide that information will be presented only in unwieldy and voluminous amounts at rates that individuals and small organizations cannot afford, manage, or even use would impermissibly shield the County from public accountability. (Cf., *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 617.) The CPRA demands that individuals have the ability to verify or disprove the government's claims. (*CBS, Inc.*

v. *Block* (1986) 42 Cal.3d 646, 651.)

The issue is whether the record is available to the public, not how much money the public agency can make for selling public records to the public. Orange County argues (*Orange County Return*, p. 32) that passing along the costs of the GIS systems to “those who will use them for business-oriented purposes” is part of the intent of Government Code section 6254.9. But public records are public records, available to all without regard for the purpose, use, or identity of the requestor. (Gov. Code, § 6257.5.) The “focus is on the nature of the document, not on the identity of the CPRA requestor or the use he or she intends to make of the document.” (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 832; Gov. Code, § 6257.5; see *Connell v. Superior Court*, *supra*, 56 Cal.App.4th at 616-617.)

If the information in the County’s records produces criticism (or praise) from the public or helps to ensure accuracy in government reports, that result is one that the Legislature has factored into the equation of the CPRA. The Constitutional and statutory mandates are to broaden access to public records, not to limit access or deny key factual data to taxpayers. The legislative intent is to provide public access to public records and data in order to promote the

democratic process. The trial court's decision to broadly interpret the software exemption and prevent disclosure is contrary to that intent.

By denying the public the specific planning data, the real impact is to keep the public planning discussion vague, and blunt the political conclusions that are drawn from that information. There is nothing like the availability of the GIS data to allow the public to make the arguments to their elected officials, especially with land use decisions.

It is that emphasis and impact that the County seeks to deny and withhold. By managing the data and imposing an effective blackout on the use of public data, the County controls the public debate. Under the Public Records Act, the predictable and certain effect arising from the release of the information is that the public will be better informed in topics in which it has a deep and abiding interest.

The judgment made by the Legislature values the people's right to have access to information about the conduct of the people's business. The people enshrined that right in the California Constitution. The Courts have the opportunity and the duty to protect that right. "Access to information concerning the conduct of the people's business is a fundamental and necessary right of every

person in this state.” (Gov. Code, § 6250.)

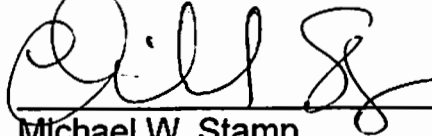
CONCLUSION

Under the California Public Records Act, the Legislature and the Courts consistently have declared the importance of the right of public access and meaningful public participation in local government. Those rights are fundamental and essential to open government and to the democratic process itself. We respectfully urge this Court to consider those rights as paramount in the Court’s consideration of this case, and as integral parts of the processes and determinations raised in this case.

Respectfully submitted,

January 13, 2011

LAW OFFICES OF MICHAEL W. STAMP

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Michael W. Stamp
Molly Erickson

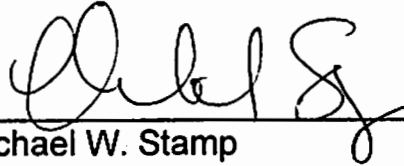
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Certificate of Word Count

(Calif. Rules of Court, rules 8.204, 8.490)

The Application for Leave to File Amicus Curiae Brief; Brief in Support of Petitioner and Appellant Sierra Club consists of 2491 words as counted by the Corel WordPerfect version 12 word-processing program used to generate the document.

Date: January 13, 2011 LAW OFFICES OF MICHAEL W. STAMP



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MONTEREY

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action. My business address is 479 Pacific Street, Suite One, Monterey, California 93940.

On January 13, 2011, I served the foregoing document described as follows:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER AND APPELLANT SIERRA CLUB; BRIEF OF AMICUS CURIAE

on the parties in this action as follows:

(X) by placing a true copy thereof enclosed in a sealed envelope and addressed as shown below, and depositing the envelope for overnight delivery via Federal Express.

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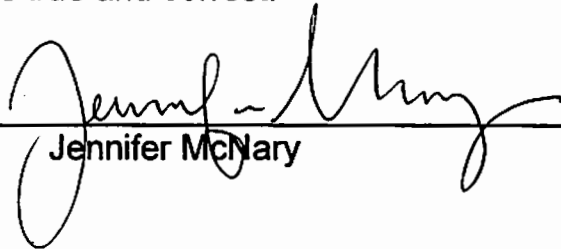
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Executed and mailed on January 13, 2011 at Monterey,
California.

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



Jennifer McNary