

Case No. G044138

**IN THE 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.

**REAL PARTY IN INTEREST'S APPENDIX VOLUME 2
RPA 88 - 122**

From the Superior Court of the State of California,
County of Orange, Case No. 30-2009-00121878

The Honorable James J. Di Cesare, Judge
Department C-18

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County of Orange

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		112		Exhibit J – Chapter 447, Statutes of 1988 (Assembly Bill No. 3265)
1	1	1	12/11/09	<i>Ex Parte</i> Application for Order Continuing Settlement Conference, Continuing Hearing on Motion for Writ of Mandate, etc. filed by The Sierra Club

2	1	14	12/14/09	Respondent County of Orange's Opposition to Petitioner's <i>Ex Parte</i> Application to Continue Hearing on Motion for Issuance of Writ of Mandate; Declaration of Mark Servino in Support thereof
		26		Exhibit A – Page 5 of the County's Answer to the Sierra Club's Petition for Writ of Mandate
		27		Exhibit B – Copy of e-mail from Mark Servino to Sabrina Venskus dated July 13, 2009
		28		Exhibit C – Signed stipulation between counsel for the Sierra Club and County of Orange regarding briefing schedule and hearing dates.
		36		Exhibit D – Sierra Club's Case Management Statement dated October 15, 2009
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3	1	50	12/14/09	Minutes for <i>Ex Parte</i>
4	1	52	12/18/09	Minutes for Status Conference
14	2	116	01/19/10	Respondent County Of Orange's Notice Of Errata To Compendium In Support Of Opposition To Petitioner's Amended And Superseded Motion For Additional Briefing Attaching Signed Supplemental Declaration Of Robert Jelinek
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8	1	64	03/23/10	Minutes Finalized for Motion – Other
9	1	65	04/12/10	Exhibit No. 31: ArcGIS 9 - What is ArcGIS 9.3? (Attached as Exhibit 3 to Sierra Club's Petition for Extraordinary Writ) (Not admitted)
10	1	75	04/12/10	Exhibit No. 47.5 ODC Project Model Date Distribution Policy (Admitted)
11	1	77	08/03/10	Judgment Denying Petition for Writ of

				Mandate
12	1	80	09/03/10	Orange County Superior Court Register of Actions for Case No. 30-2009-00121878-CU-WM-CJC.

1 Respondent County of Orange ("County") hereby respectfully requests that the Court
2 take judicial notice of the following documents in support of its Opposition to Petitioner's
3 Motion for Issuance of Writ of Mandate:

4 1. City of San Jose Memorandum dated January 19, 1988 re Legislative Proposal For
5 Authority To Sell Or License Proprietary Information, a true and correct copy of which is
6 attached as Exhibit A;

7 2. Assembly Bill 3265 (1987-1988 Reg. Sess.) as introduced Feb. 11, 1988, a true
8 and correct copy of which is attached as Exhibit B;

9 3. Assembly Bill 3265 (1987-1988 Reg. Sess.) as amended April 4, 1988, a copy of
10 which is attached as Exhibit C;

11 4. Assembly Committee On Governmental Organization, Analysis of AB 3265
12 (1987-1988 Reg. Sess.) as proposed to be amended April 4, 1988, a true and correct copy of
13 which is attached as Exhibit D;

14 5. Assembly Bill 3265 (1987-1988 Reg. Sess.) as amended June 9, 1988, a true and
15 correct copy of which is attached as Exhibit E;

16 6. California Department of Finance, Analysis of AB 3265 (1987-1988 Reg. Sess.) as
17 amended June 9, 1988, a true and correct copy of which is attached as Exhibit F;

18 7. Senate Committee On Governmental Organization, Analysis of AB 3265 (1987-
19 1988 Reg. Sess.) as amended June 9, 1988, a true and correct copy of which is attached as
20 Exhibit G;

21 8. Assembly Bill 3265 (1987-1988 Reg. Sess.) as amended June 15, 1988; a true and
22 correct copy of which is attached as Exhibit H; and


23 9. California Department of Finance, Analysis of AB 3265 (1987-1988 Reg. Sess.) as
24 amended June 15, 1988, a true and correct copy of which is attached as Exhibit I; and

25 10. Chapter 447, Statutes of 1988 (Assembly Bill No. 3265), a true and correct copy
26 of which is attached as Exhibit J.

1 This request is supported by the attached Memorandum of Points and Authorities and the
2 supporting declaration of Deputy County Counsel Mark D. Servino.

3
4 DATED: October 22, 2009 Respectfully submitted,

5 NICHOLAS S. CHRISOS, COUNTY COUNSEL
6 MARK D. SERVINO, DEPUTY

7 By 
8 Mark D. Servino, Deputy
9 Attorneys for Respondent County of Orange
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OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Respondent the County of Orange respectfully requests that the Court take judicial notice
4 of the records contained in the legislative history of Assembly Bill No. 3265 (AB 3265)
5 (Chapter 447, Statutes of 1988). AB 3265 enacted Government Code section 6254.9, which
6 contains the computer mapping system exemption under which the County has withheld the
7 production of its Landbase computer mapping system. Thus, the proper interpretation of
8 Section 6254.9 is of central importance to the consideration of this matter.

9 Government Code section 6254.9 exempts computer mapping systems, which are now
10 commonly known as geographic information systems, from disclosure under the California
11 Public Records Act. Petitioner’s lawsuit arises out of its request for the production of certain
12 components of the County’s Landbase computer mapping system. The County has cited records
13 contained in the legislative history of AB 3265, as prepared Legislative Intent Service, which are
14 attached as exhibits to this Request.

15 **II. ARGUMENT**

16 The fundamental task of a court in construing a statute is “to ascertain the Legislature’s
17 intent so as to effectuate the purpose of the statute.” (*Smith v. Superior Court* (2006) 39 Cal.4th
18 77, 83.) If the statutory terms are ambiguous, a court “may examine extrinsic sources, including
19 the ostensible objects to be achieved and the legislative history.” (*Ibid.*) “The evolution of
20 legislation from its introduction to its final form may provide some insight into the underlying
21 legislative intent.” (*Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1373.) “Of prime
22 consideration in statutory interpretation are the Legislature’s objectives and the evils it sought to
23 prevent.” (*Id.* at p. 1374.)

24 California courts have held that “[s]tatements by the sponsor of legislation may be
25 instructive..., as are legislative committee reports on the proposed legislation.” (*Id.* at p. 1373;
26 *see also Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 401 [statements of the sponsor
27 of legislation are entitled to be considered in determining the import of the legislation].) This
28 rule is particularly applicable where the statement is consistent with the statutory language and

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COUNTY OF ORANGE

1 other legislative history. (*Dubins v. Regents of Univ. of Cal.* (1994) 25 Cal.App.4th 77, 87.)
2 Thus, in *Delaney v. Baker* (1999) 20 Cal.4th 23, 32, the California Supreme Court specifically
3 noted *amici curiae's* reference to the sponsor of the legislation at issue, the Beverly Hills Bar
4 Association, which was quoted in a Senate committee analysis appearing shortly before the
5 bill's enactment.

6 Evidence Code section 452 allows the Court to take judicial notice of the following
7 matters: "(c) Official acts of the legislative, executive, and judicial departments of the United
8 States and of any state of the United States; ... (h) Facts and propositions that are not reasonably
9 subject to dispute and are capable of immediate and accurate determination by resort to sources
10 of reasonably indisputable accuracy." California courts have taken judicial notice of legislative
11 history materials under this section. (*People v. Ledesma* (1997) 16 Cal.4th 90, 98, fn. 4.)

12 Items 1, 4, 6, 7 and 9 of the Request for Judicial Notice are analyses of Assembly Bill
13 No. 3265 that are contained in the bill's legislative history. Items 2, 3, 5, 8 and 10 are the
14 versions of Assembly Bill No. 3265 as it was introduced, amended, and then approved by the
15 Governor. These records may be noticed under Evidence Code section 452, subdivision (c).
16 These documents are material to the present case because they reflect the legislative history of
17 Government Code section 6254.9, and the interpretation of this statute is of central importance
18 to the resolution of the issues presented.

19 Judicial notice of documents falling within Evidence Code section 452 is required when
20 requested by a party and that party:

- 21 (a) Gives each adverse party sufficient notice of the request,
22 through the pleadings or otherwise, to enable such adverse party to
23 prepare to meet the request; and
24 (b) Furnishes the court with sufficient information to enable it to
25 take judicial notice of the matter.

26 (Evid. Code, § 453). Through this Request, the County has provided sufficient notice to
27 Petitioner.

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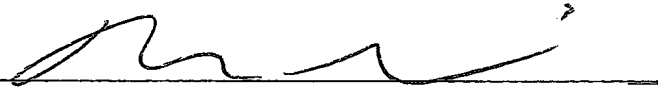
III. CONCLUSION

For the aforementioned reasons, the County respectfully requests that the Court grant its Request for Judicial Notice.

DATED: October 22, 2009

Respectfully submitted,

NICHOLAS S. CHRISOS, COUNTY COUNSEL
MARK D. SERVINO, DEPUTY

By 
Mark D. Servino, Deputy
Attorneys for Respondent County of Orange

DECLARATION OF MARK D. SERVINO

I, MARK D. SERVINO, declare as follows:

1. I am an attorney licensed to practice before the Courts of the State of California. I am a Deputy County Counsel with Office of the County Counsel for the County of Orange, counsel of record for Respondent the County of Orange. I have personal knowledge of the facts stated herein, and could and would testify competently thereto under oath.

2. I ordered a copy of the legislative history of Assembly Bill No. 3265 (AB 3265) from Legislative Intent Service, Inc. Exhibits "A" through "J" are all true and correct copies of the materials compiled by Legislative Intent Service, Inc., which were then transmitted to me.

3. Attached hereto as Exhibit "K" is a true and correct copy of the Declaration of Filomena M. Yeroshek, an attorney employed by Legislative Intent Service, Inc., who compiled the legislative history of AB 3265.

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

Executed this 22 day of October, 2009, in Santa Ana, California.


Mark D. Servino

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CITY OF SAN JOSE - MEMORANDUM

TO: Administrative Services Committee FROM: Joan R. Gallo
 City Attorney
 SUBJECT: Legislative Proposal For Authority to Sell or License Proprietary Information DATE: January 19, 1988

APPROVED

DATE

Background

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

The AMS is the product of eight years of efforts on the part of Public Works to collect and store on computer magnetic tape, city wide information regarding the location of public improvements and natural features. This wide range of data can be arranged in various ways to produce many types of maps for specialized uses, such as fire response, sewer collection, or police beat maps. Public Works estimates that development costs to date have exceeded \$2 million dollars.

Since AMS was developed, the City has received a number of requests from utility companies, engineering firms, map companies and other commercial concerns, for copies of the system in computer readable form, i.e. on magnetic tape. These requests have often come in the form of a request for public records under the Public Records Act.

LEGISLATIVE INTENT SERVICE (800) 666-1917



JRG:KAH:jc
Administrative Service Committee
RE: Legislative Proposal for Authority
to Sell or License Proprietary
Information

January 19, 1988
Page 4

Legislative Proposal

Add the following provision to Govt. Code Section 6256.

§ 6256

A) Information or data stored in a computer remains subject to disclosure pursuant to this Section and Section § 6257. However, nothing in this Chapter shall prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of such proprietary information by any person receiving such information.

Proprietary information shall include computer readable data bases, computer programs, and computer graphics systems.

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LEGISLATIVE INTENT SERVICE



ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to amend Section 6257 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as introduced, Cortese. Public records: proprietary information.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that the act does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of the information.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6257 of the Government Code is
- 2 amended to read:
- 3 6257. (a) Except with respect to public records
- 4 exempt by express provisions of law from disclosure, each
- 5 state or local agency, upon any request for a copy of
- 6 records, which reasonably describes an identifiable
- 7 record, or information produced therefrom, shall make



1 the records promptly available to any person, upon
2 payment of fees covering direct costs of duplication, or a
3 statutory fee, if applicable. Any reasonably segregable
4 portion of a record shall be provided to any person
5 requesting such record after deletion of the portions
6 which are exempt by law.

7 *(b) Nothing in this chapter prohibits an agency from*
8 *selling proprietary information or requiring a licensing*
9 *agreement for payment of royalties to the agency prior*
10 *to any subsequent sale, distribution, or commercial use of*
11 *the proprietary information by any person receiving the*
12 *information. For purposes of this subdivision,*
13 *“proprietary information” includes computer readable*
14 *data bases, computer programs, and computer graphics*
15 *systems. Any fee or royalty imposed for proprietary*
16 *information shall be based on the cost of developing and*
17 *maintaining the information and shall take into*
18 *consideration whether the person requesting the*
19 *information contributed to the development of the*
20 *information.*

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AMENDED IN ASSEMBLY APRIL 4, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to ~~amend Section 6257 of~~ *add Section 6254.9* to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as amended, Cortese. Public records: ~~proprietary information computer software.~~

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

~~This bill would provide that the act does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of the information.~~

This bill would provide that computer software developed or maintained by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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LEGISLATIVE INTENT SERVICE



The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6257 of the Government Code is~~
2 *SECTION 1. Section 6254.9 is added to the*
3 *Government Code, to read:*

4 *6254.9. (a) Computer software developed or*
5 *maintained by a state or local agency is not itself a public*
6 *record under this chapter. The agency may sell, lease, or*
7 *license the software for commercial or noncommercial*
8 *use.*

9 *(b) Nothing in this section is intended to affect the*
10 *public record status of information merely because it is*
11 *stored in a computer.*

12 *(c) As used in this section, "computer software"*
13 *includes computer readable data bases, computer*
14 *programs, and computer graphics systems.*

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**All matter omitted in this version of the
bill appears in the bill as introduced in the
Assembly, February 11, 1988 (J.R. 11).**

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LEGISLATIVE INTENT SERVICE



Date of Hearing: April 5, 1988

AB 3265

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Richard E. Floyd, Chairman

AB 3265 (Cortese) - As Proposed to be Amended: April 4, 1988

SUBJECT

Should computer software be exempt from the California Public Records Act?

DIGEST

Existing law, the California Public Records Act, requires state and local agencies to furnish a copy of records to people who request them at a reasonable cost.

This bill would specify that "computer software", as defined, which is developed or maintained by a public agency is not a "public record" for purposes of the California Public Records Act, but that information stored on computers retains its public record character.

The bill further specifies that a public agency may sell, license, or lease its software for any purpose.

FISCAL EFFECT

Potential revenue to state and local agencies from marketing of software.

COMMENTS

1) Purpose

The City of San Jose, the sponsor of the bill, has developed various computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes. A number of utility companies, engineering firms, private consultants and other commercial interests are requesting the city's software under the California Public Records Act. The city introduced the bill in order to:

- a) make it clear that the software is not itself a public record;
- b) allow the City to sell, lease, or license the software at a cost greater than the "direct costs of duplication", as specified by the Public Records Act (Government Code §6257).

The City is concerned about recouping the cost of developing the software.

LIS - 3

- continued -

Exhibit D

AB 3265

OC 00101

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2) Status of Computer Data

The bill draws a distinction between computer software and computer-stored information. The bill declares that information is not shielded from the California Public Records Act "merely because it is stored on a computer".

In addition, current law also provides that "computer data shall be provided in a form determined by the agency" (Government Code §6256).

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Date of Hearing: April 5, 1988

AB 3265

SUPPORT

City of San Jose
San Diego Association of Governments
California Association of Licensed Investigators

OPPOSITION

None registered

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AMENDED IN SENATE JUNE 9, 1988
AMENDED IN ASSEMBLY APRIL 4, 1988

CALIFORNIA LEGISLATURE--1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to add Section 6254.9 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as amended, Cortese. Public records: computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that computer software developed ~~or maintained~~ by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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LEGISLATIVE INTENT SERVICE



The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.9 is added to the
2 Government Code, to read:

3 6254.9. (a) Computer software developed ~~or~~
4 ~~maintained~~ by a state or local agency is not itself a public
5 record under this chapter. The agency may sell, lease, or
6 license the software for commercial or noncommercial
7 use.

8 ~~(b) Nothing in this section is intended to affect the~~
9 ~~public record status of information merely because it is~~
10 ~~stored in a computer.~~

11 ~~(e)~~

12 (b) As used in this section, "computer software"
13 includes computer readable data bases mapping systems,
14 computer programs, and computer graphics systems.

15 (c) *This section shall not be construed to create an*
16 *implied warranty on the part of the State of California or*
17 *any local agency for errors, omissions, or other defects in*
18 *any computer software as provided pursuant to this*
19 *section.*

20 (d) *Nothing in this section is intended to affect the*
21 *public record status of information merely because it is*
22 *stored in a computer.*

23 (e) *Nothing in this section is intended to limit any*
24 *copyright protections.*

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Honorable Dominic L. Cortese
Member of the Assembly
State Capitol, Room 6031
Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Cortese	BILL NUMBER AB 3265
SPONSORED BY	RELATED BILLS	LAST AMENDED June 9, 1988

BILL SUMMARY

This bill would provide that computer software, developed by the State or Local Government, is not a public record. This act would authorize a State or Local Government agency to sell, or lease the software for commercial or noncommercial use.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO (Fiscal Impact by Fiscal Year)				Code Fund
	LA	FC	FC	FC	
None					

ANALYSIS

A. Specific Findings

The bill defines computer software developed by the State or Local Government as not itself a public record and, therefore, not subject to the Public Record Management Act. The bill would permit a governmental agency to sell, lease or license the software for commercial or noncommercial purposes.

The bill specifically includes computer mapping systems as computer software, thereby permitting their sale.

The bill excludes a governmental agency from any implied warranty that may be inferred by the sale of computer software, or errors, omissions, or other defects in the computer software.

The bill specifies that any data that may be stored on a computer still retains its public record status.

B. Fiscal Analysis

The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement. Since the demand and conditions of sale or license are not known, it is not possible to estimate the potential revenue.

POSITION	DEPARTMENT	DIRECTOR	DATE
NEUTRAL			

Principal Analyst (83) Joe Pujals	Date 6-16-88	Ofc. Inf. Tech. Steve E. Kolodney	Dir. Date	Governor's Office Position noted Position approved Position disapproved bv: Date:
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Joe Pujals

Steve E. Kolodney

Exhibit F

3FA-4

OC 00106

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STAFF ANALYSIS OF ASSEMBLY BILL NO. 3265 (Cortese)
As Amended June 9, 1988

SUBJECT

Public records: computer software

DESCRIPTION

1. AB 3265 specifies that "computer software", as defined, which is developed by a state or local agency is not itself a public record for purposes of the California Public Records Act, but that information stored on computers retains its public record character.
2. The bill permits a public agency to sell, lease, or license its computer software for commercial or noncommercial use.
3. The measure specifies that the provisions of this bill shall not be construed to create an implied warranty on the part of the public agency for errors, omissions, or other defects in any computer software.

BACKGROUND

The California Public Records Act requires each state and local agency upon receiving any request for a copy of records in its possession which are subject to public disclosure to make the records promptly available upon payment of fees covering the direct costs of duplication. The purpose of the Act is to allow access to information concerning the conduct of the people's business. The Act also provides that copies of computer data shall be provided in a form determined by the agency.

The City of San Jose, the sponsor of this bill, has developed various computer readable data bases and other computer stored information for various civic planning purposes. A number of private parties have requested use of the city's software under the Public Records Act for profit-making purposes. The sponsor argues that the proprietary information requested has been developed and maintained by the city at great public expense.

According to the author, the purpose of this bill is to clarify that computer software is not itself a public record and to authorize a public agency to sell, lease, or license the software at a cost greater than the direct costs of duplication, as specified by the Public Records Act. The bill would permit the city of San Jose and other governmental agencies to recoup development costs of computer databases sold to the public.

(CONTINUED)



KNOWN POSITIONS:

The following SUPPORT AB 3265:

City of San Jose
City of San Diego
County of Los Angeles
State Association of County Auditors
County of San Diego
County of Sacramento
California Municipal Utilities Association
California Association of Licensed Investigators
San Diego Association of Governments

There is NO KNOWN OPPOSITION.

WRITTEN COMMUNICATION: On file

FISCAL COMMITTEE: Senate Appropriations

* * * * *

AT:dm



AMENDED IN SENATE JUNE 15, 1988
AMENDED IN SENATE JUNE 9, 1988
AMENDED IN ASSEMBLY APRIL 4, 1988

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

ASSEMBLY BILL

No. 3265

Introduced by Assembly Member Cortese

February 11, 1988

An act to add Section 6254.9 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, as amended, Cortese. Public records: computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that computer software developed by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.9 is added to the
2 Government Code, to read:

3 6254.9. (a) Computer software developed by a state
4 or local agency is not itself a public record under this
5 chapter. The agency may sell, lease, or license the
6 software for commercial or noncommercial use.

7 (b) As used in this section, "computer software"
8 includes computer mapping systems, computer
9 programs, and computer graphics systems.

10 (c) This section shall not be construed to create an
11 implied warranty on the part of the State of California or
12 any local agency for errors, omissions, or other defects in
13 any computer software as provided pursuant to this
14 section.

15 (d) Nothing in this section is intended to affect the
16 public record status of information merely because it is
17 stored in a computer. *Public records stored in a*
18 *computer shall be disclosed as required by this chapter.*

19 (e) Nothing in this section is intended to limit any
20 copyright protections.

O



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Honorable Dominic L. Cortese
Member of the Assembly
State Capitol, Room 6031
Sacramento, CA 95814

DEPARTMENT
Finance

AUTHOR
Cortese

BILL NUMBER
AB 3265

SPONSORED BY

RELATED BILLS

LAST AMENDED
June 15, 1988

BILL SUMMARY

This bill would provide that computer software, developed by the State or Local Government, is not a public record. This act would authorize a State or Local Government agency to sell, or lease the software for commercial or noncommercial use.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO (Fiscal Impact by Fiscal Year)			Code Fund
	LA CO RV	FC 1988-89	FC 1989-90	
None				

ANALYSIS

A. Specific Findings

The bill defines computer software developed by the State or Local Government as not itself a public record and, therefore, not subject to the Public Record Management Act. The bill would permit a governmental agency to sell, lease or license the software for commercial or noncommercial purposes.

The bill specifically includes computer mapping systems as computer software, thereby permitting their sale.

The bill excludes a governmental agency from any implied warranty that may be inferred by the sale of computer software, or errors, omissions, or other defects in the computer software.

The bill specifies that any data that may be stored on a computer still retains its public record status.

B. Fiscal Analysis

The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement. Since the demand and conditions of sale or license are not known, it is not possible to estimate the potential revenue.

POSITION	DEPARTMENT DIRECTOR	DATE
NEUTRAL		

Principal Analyst	Date	Ofc. Inf. Tech. Dir.	Date	Governor's Office
(83) Joe Pujals	6/20/88	Steve E. Kolodney		Position noted
				Position approved
				Position disapproved

J. Pujals

6/20/88

Steve E. Kolodney

Exhibit I

SFA-3

LEGISLATIVE INTENT SERVICE (800) 666-1917



CHAPTER 447
(Assembly Bill No. 3265)

An act to add Section 6254.9 to the Government Code, relating to public records.

[Approved by Governor August 20, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, Cortese. Public records: computer software.

The existing California Public Records Act requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

This bill would provide that computer software developed by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

The people of the State of California do enact as follows:

SECTION 1. Section 6254.9 is added to the Government Code, to read:

§ 6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.





LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF FILOMENA M. YEROSHEK

I, Filomena M. Yeroshek, declare:

I am an attorney licensed to practice before the courts of the State of California, State Bar No. 125625, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 3265 of 1988. Assembly Bill 3265 was approved by the Legislature and was enacted as Chapter 447 of the Statutes of 1988.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 3265 of 1988. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

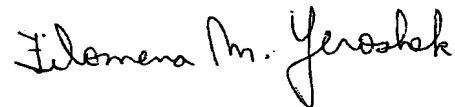
ASSEMBLY BILL 3265 OF 1988:

1. All versions of Assembly Bill 3265 (Cortese-1988);
2. Procedural history of Assembly Bill 3265 from the 1987-88 Assembly Final History;
3. Analysis of Assembly Bill 3265 prepared for the Assembly Committee on Governmental Organization;
4. Material from the legislative bill file of the Assembly Committee on Governmental Organization on Assembly Bill 3265;
5. Analysis of Assembly Bill 3265 prepared for the Assembly Committee on Ways and Means;
6. Document from the legislative bill file of the Assembly Committee on Ways and Means on Assembly Bill 3265;

Exhibit K

7. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 3265;
8. Analysis of Assembly Bill 3265 prepared for the Senate Committee on Governmental Organization;
9. Material from the legislative bill file of the Senate Committee on Governmental Organization on Assembly Bill 3265;
10. Analysis of Assembly Bill 3265 prepared by the Legislative Analyst;
11. Third Reading analysis of Assembly Bill 3265 prepared by the Office of Senate Floor Analyses;
12. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 3265;
13. Concurrence in Senate Amendments analysis of Assembly Bill 3265 prepared by the Assembly Office of Research;
14. Legislative Counsel's Rule 26.5 analysis of Assembly Bill 3265;
15. Material from the legislative bill file of Assemblyman Dominic L. Cortese on Assembly Bill 3265;
16. Post-enrollment documents regarding Assembly Bill 3265;
17. Press Release #593 dated August 22, 1988, prepared by the Office of the Governor announcing the signing of Assembly Bill 3265.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of June, 2008 at Woodland, California.



FILOMENA M. YEROSHEK

PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 West Santa Ana Boulevard, Suite 407, Santa Ana, California 92702. I am not a party to the within action.

On October 22, 2009, I served the foregoing **RESPONDENT COUNTY OF ORANGE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITIONER'S MOTION FOR ISSUANCE OF WRIT OF MANDATE; DECLARATION OF MARK D. SERVINO IN SUPPORT THEREOF** on all other parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

(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.

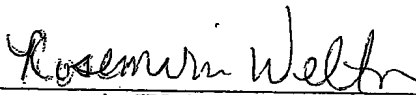
(BY OVERNIGHT COURIER) I placed such envelope(s) addressed as shown below for collection and delivery by UPS with delivery fees paid or provided for in accordance with this office's practice. I am readily familiar with this office's practice for processing correspondence for delivery the following day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

(BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

(BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s) shown below.

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

(FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.



Rosemarie Welton

NAME AND ADDRESS TO WHOM SERVICE WAS MADE

Sabrina D. Venskus, Esq.
Venskus & Associates
1055 Wilshire Blvd., Suite 1660
Los Angeles, CA 90017
Fax No. 213.482.4246


Attorneys for Petitioners

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 19 2010

ALAN CARLSON, Clerk of the Court

BY B RYAN 

NICHOLAS S. CHRISOS, COUNTY COUNSEL
MARK D. SERVINO, DEPUTY - State Bar No. 286941
333 West Santa Ana Boulevard, Suite 407
Post Office Box 1379
Santa Ana, California 92702-1379
Telephone: (714) 834-4760
Facsimile: (714) 834-2359

JAN 19 2010

BY: B. RYAN

Attorneys for Respondent County of Orange

Exempt From Filing Fees Pursuant to Gov't Code § 6103

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

THE SIERRA CLUB,

Petitioner,

v.

COUNTY OF ORANGE; and Does 1 through 10,

Respondents.

Case No. 30-2009-00121878

ASSIGNED FOR ALL PURPOSES TO
JUDGE JAMES J. DI CESARE
DEPARTMENT C18

RESPONDENT COUNTY OF ORANGE'S
NOTICE OF ERRATA TO COMPENDIUM
IN SUPPORT OF OPPOSITION TO
PETITIONER'S AMENDED AND
SUPERSEDED MOTION FOR
ADDITIONAL BRIEFING ATTACHING
SIGNED SUPPLEMENTAL
DECLARATION OF ROBERT JELINEK

DATE: February 4, 2010
TIME: 1:30 p.m.
DEPT: C18

Petition Filed: April 21, 2009

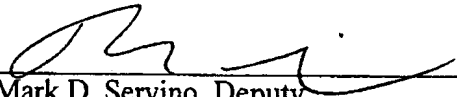
1 TO ALL PARTIES AND THEIR ATTORNEYS' OF RECORD:

2 PLEASE TAKE NOTICE THAT respondent County of Orange (County) hereby submits the
3 signed declaration of Robert Jelinek in support of the County's Opposition To Petitioner's Amended
4 And Superseded Motion For Additional Briefing. The County had submitted an unsigned copy of the
5 declaration that he approved with its Compendium, because Mr. Jelinek was not able to return to work
6 and sign the declaration until January 19, 2010 due to a family emergency and illness. The signed
7 declaration is attached hereto as Exhibit "A," and it contains the same text as the unsigned declaration
8 that was filed on January 13, 2010.

9 DATED: January 19, 2010

Respectfully submitted,

10 NICHOLAS S. CHRISOS, COUNTY COUNSEL
11 MARK D. SERVINO, DEPUTY

12 By 
13 Mark D. Servino, Deputy
14 Attorneys for Respondent County of Orange

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

EXHIBIT

A

1 SUPPLEMENTAL DECLARATION OF ROBERT JELINEK

2 I, Robert Jelinek, declare:

3 1. I am the Deputy County Surveyor for the County of Orange. I oversee the Landbase
4 maintenance unit within the Geomatics Division of the Orange County Public Works Department
5 ("OCPW"). I have 30 years of experience as a surveyor and 17 years of experience working with
6 computer mapping systems, which are now frequently referred to as Geographic Information Systems
7 (GIS). I have personal knowledge of the following statements and, if called on as a witness, could and
8 would testify competently thereto.

9 2. The County of Orange Landbase ("Landbase") is a geographic information system, which
10 is also referred to as a Land Information System (LIS). The Landbase stores a very accurate, parcel-
11 level digital basemap containing over 640,000 parcels. The Landbase possesses graphic information
12 such as street centerlines, right-of-way lines, and parcel boundaries (cadastre), linked to text information
13 such as owner name, street address, and assessor's parcel number (attributes).

14 3. The information in the Landbase is compiled from official public records such as
15 assessment rolls, assessor parcel maps, tract maps, parcel maps, records of survey, lot line adjustments,
16 and deeds. However, inputting this data into a GIS format that is accessible by the Landbase, and
17 keeping the information current, is the most labor intensive and expensive cost associated with the
18 Landbase. This work is performed by members of my staff. My staff manually reviews, inputs, and
19 downloads the information into the Landbase often on a parcel by parcel basis to ensure accuracy.

20 4. I work with the Landbase on a daily basis. I am responsible not only for overseeing the
21 maintenance of the Landbase, but I head the ongoing efforts to upgrade and adapt the Landbase to meet
22 the County's GIS needs. I was part of a team that designed and implemented the original OC LIS and
23 was the team leader on the design and implementation of the GeoResearch system and the Web based
24 LIS maintenance tools, I supervise hardware and software technical support for Orange County
25 Geomatics. I am also responsible for overseeing the Georesearch land record search tool that is
26 accessible through Orange County Geomatics' internet website: www.ocgeomatics.com. I also have
27 conducted training programs for County personnel regarding the use and capabilities of the Landbase.

28 5. Based on my experience, education and expertise in the area of geographic information

1 systems, it is my opinion that a "geographic information system" is best defined as "an integrated
2 collection of computer software and data used to view and manage information about geographic places,
3 analyze spatial relationships, and model spatial processes." A geographic information system is not
4 limited to the executable software. It also includes the data that is stored within the system in a GIS
5 accessible format. This opinion is based on my 17 years of experience working with geographic
6 information systems, which include my present day job duties supervising the Landbase maintenance
7 unit within the Geomatics Division of OCPW.

8 6. My opinion is also based on my review of professional literature in the field of
9 geographic information systems, including several publications by ESRI, which is one of the dominant
10 developers of GIS products today. ESRI's online dictionary defines "GIS" as: "Acronym for geographic
11 information system. An integrated collection of computer software and data used to view and manage
12 information about geographic places, analyze spatial relationships, and model spatial processes. A GIS
13 provides a framework for gathering and organizing spatial data and related information so that it can be
14 displayed and analyzed." Likewise, ESRI publishes a print dictionary of GIS terms, "A to Z GIS: An
15 illustrated dictionary of geographic information systems," which contains this same definition. I
16 consider these publications by ESRI, which is a well known GIS developer, to be reliable as authority
17 regarding the definition of GIS terminology. A true and correct copy of page 90 of "A to Z GIS: An
18 illustrated dictionary of geographic information systems," is attached hereto as Exhibit "21." A true and
19 correct copy of a printout of ESRI's online dictionary definition for "GIS" is attached hereto as Exhibit
20 "22."

21 7. My opinion is also based on my review of the manuals and treatises produced by
22 Petitioner in response to the County's Request for Production of Documents, Set One. Petitioner's own
23 books, manuals and user guides often defined "geographic information system" as a combination of both
24 software and data. These definitions are consistent with my opinion and understanding of what
25 constitutes a geographic information system. None of the manuals or treatises provided by Petitioner
26 defines GIS as only being comprised of executable software. True and correct copies of the sections of
27 Petitioner's document production that I reviewed, which define or describe a GIS, are attached hereto as
28 Exhibits "28" and "29."

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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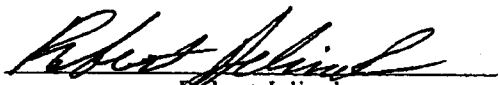
8. "Computer mapping system" is an early term used for GIS that I recall being used in the past, and I have reviewed literature in the GIS field that has referred to early geographic information systems as computer mapping systems. "Land Information System" is also a term that is used to refer to specific type of GIS.

9. The County licenses the Landbase's GIS Data in a GIS format for a fee that depends on the number of parcels and the length of the term of the license. However, the County also produces non-GIS formatted records containing the data stored in the County's Landbase without requiring the payment of a license. The County has not withheld any information from the Sierra Club, and has agreed to produce such information in a non-GIS format without a license fee.

10. On December 7, 2009, I was forwarded a copy of an e-mail prepared by the Sierra Club's attorney, which requested certain geographic information about a particular area in Orange County in a non-GIS format. This was the first time that the Sierra Club had requested to review the non-GIS formatted records that were responsive to its request. A true and correct copy of the e-mail dated December 7, 2009 from Theresa Labriola is attached hereto as Exhibit "26."

11. On December 10, 2009, I produced a binder containing records that were responsive to the e-mailed request to the Sierra Club's representatives, Dean Wallraff and Amanda Kochanek de Recinos. These records contained the information relating to the geographic area requested by Petitioner. The information stored in the Landbase is derived from records like those provided to Petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of January, 2010, in County of Orange,
State of California


Robert Jelinek

1 **PROOF OF SERVICE**

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

4 On January 19, 2010, I served the foregoing **RESPONDENT COUNTY OF ORANGE'S**
5 **NOTICE OF ERRATA TO COMPENDIUM IN SUPPORT OF OPPOSITION TO**
6 **PETITIONER'S AMENDED AND SUPERSEDED MOTION FOR ADDITIONAL BRIEFING**
7 **ATTACHING SIGNED SUPPLEMENTAL DECLARATION OF ROBERT JELINEK**
on all other parties to this action by placing a true copy of said document in a sealed envelope in the
following manner:

8 (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
9 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.

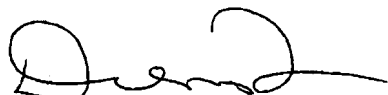
10 (BY OVERNIGHT COURIER (UPS)) I placed such envelope(s) addressed as shown below for
11 collection and delivery by UPS with delivery fees paid or provided for in accordance with this office's
practice. I am readily familiar with this office's practice for processing correspondence for delivery the
12 following day by UPS.

13 (BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s)
14 shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

15 (BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s)
shown below.

16 (STATE) I declare under penalty of perjury under the laws of the State of California that
17 the foregoing is true and correct.

18 (FEDERAL) I declare that I am employed in the office of a member of the Bar of this
Court at whose direction the service was made.

19 

20 Diem Tran

21 **NAME AND ADDRESS TO WHOM SERVICE WAS MADE**

22 Sabrina D. Venskus, Esq.
23 Theresa A. Labriola, Esq.
24 VENSKUS & Associates, P.C.
1055 Wilshire Blvd., Suite 1660
Los Angeles, CA 90017
25 Fax: (213) 482-4246
venskus@lawsv.com
tlabriola@lawsv.com

Attorneys for Petitioner

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 333 W. Santa Ana Blvd, Suite 407, Santa Ana, California 92701.

On November 15, 2010, I served the foregoing document described as **REAL PARTY IN INTEREST'S APPENDIX VOLUME 2** on each interested party, as follows:

SEE ATTACHED SERVICE LIST

- (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at the Office of the County Counsel, Santa Ana, California. I am readily familiar with the Office of the County Counsel's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.
- (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by United Parcel Service (UPS), an express service carrier which provides overnight delivery, as follows. I placed a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed, as set forth above, with fees for overnight delivery paid or provided for.
 - (CARRIER PICK-UP) I delivered such envelopes or packages to an authorized carrier or driver authorized by the express service carrier to receive documents.
- (BY ELECTRONIC MAIL) I caused the foregoing document to be served electronically by electronically mailing a true and correct copy through Office of the County Counsel's electronic mail system to the e-mail address(es), as set forth on the attached service list, and the transmission was reported as complete and no error was reported.

Executed on November 15, 2010, at Santa Ana, California.

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

Rosemarie Welton
(Type or print name)

Rosemarie Welton
(Signature)

SERVICE LIST

**Sierra Club v. Superior Court of the State of California, County of
Orange, Court of Appeal Case Number G044138**

Sabrina D. Venskus, SBN 219153
Venskus & Associates, P.C.
21 South California Street, Suite 204
Ventura, California 93001-2885
Telephone: (805) 641-0247
Facsimile: (213) 482-4246
Email: venskus@lawsv.com
(*via UPS*)

Counsel for Petitioner
The Sierra Club