G044138

Court of Appeal No. _____

(Orange County Superior Court Case No. 30-2009-00121878-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

REQUEST FOR JUDICIAL NOTICE; DECLARATION OF DEAN WALLRAFF

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Attorney for Petitioner,

THE SIERRA CLUB

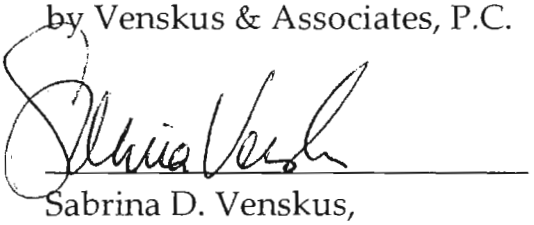
Pursuant to rule 8.252 of the California Rules of Court, and to Evidence Code sections 452 and 459, Petitioner Sierra Club respectfully requests this Court to take judicial notice of the following documents:

- Legislative History of A.B. 2799, 1999-2000 Legislative Session (Exhibit 1)
    - Bill History (Exhibit 1 at RJN1-0001—RJN-0002.)
    - Bill Analysis Prepared for June 27, 2000 Meeting of Senate Judiciary Committee (Exhibit 1 at RJN1-0003—RJN-0010.)
    - Bill Analysis Prepared for July 6, 2000 Session of California Senate (Exhibit 1 at RJN-0011—RJN-0018.)
    - Bill Analysis Prepared for July 6, 2000 Session of California Assembly (Exhibit 1 at RJN-0019—RJN-0020.)
- Selected pages from GIS Needs Assessment Study prepared for County of Orange, California by Geographic Technologies Group (Exhibit 2)
- Official Voter Information Guide for Proposition 59, November 2004 California General Election, available at <http://vote2004.sos.ca.gov/voterguide/propositions/prop59-arguments.htm> [as of May 7, 2010] (Exhibit 3)

This request for judicial notice is based on the following points and authorities.

Dated: August 25, 2010

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



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

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Memorandum of Points and Authorities

I. Introduction

The issue in this case is the statutory interpretation of one Public Records Act provision, Government Code section 6254.9, subdivision (b), namely, whether "computer software," as defined in that section to include "computer mapping systems," thereby includes the GIS data operated upon by the mapping software? Or does it refer only to the mapping software itself?

As an aid to construing the statute, this Court may take judicial notice of relevant background information concerning the subject matter of the statute. Petitioner requests the court take judicial notice of part of the legislative history of Government Code section 6253.9, enacted in 2000 to amend the Public Records Act. The legislative history of this section shows that part of the legislature's purpose in adopting section 6253.9 was to avoid the situation arising in this case, where the County has effectively frustrated the Petitioner's request for public records by requiring them to purchase millions of pages of documents instead of providing them with the data in a more economical and useful form, on CD.

Petitioner also requests the Court to take judicial notice of information demonstrating the increased importance in governmental information technology systems of GIS data similar to the public records being sought here. It is relevant because it shows that the consequences of the Court's refusal to grant Petitioner's writ

would be to foreclose the public's access to many electronic public records, which are becoming more important as governments increasingly rely them, and which constitute a larger and larger share of public records, as governments continue to computerize their operations.

These materials were not presented to the trial court, for reasons given below.

II. Argument

A. Legislative Facts Necessary for the Proper Statutory Interpretation Should be Judicially Noticed on Appeal.

Evidence Code section 450 allows this court to take judicial notice of any matter authorized by law. "Law" includes decisional law (Evid. Code section 160.), so judicial notice is not restricted to matters authorized by the Evidence Code.

> Under the Evidence Code, as under existing law, courts may consider whatever materials are appropriate in construing statutes, determining constitutional issues, and formulating rules of law. That a court may consider legislative history, discussions by learned writers in treatises and law reviews, materials that contain controversial economic and social facts or findings or that indicate contemporary opinion, and similar materials is inherent in the requirement that it take judicial notice of the law. In many cases, the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of such extrinsic aids. Cf. People v. Sterling Refining Co., 86 Cal.App. 558, 564, 261 Pac. 1080, 1083 (1927) (statutory

> authority to notice "public and private acts" of legislature held to authorize examination of legislative history of certain acts). See also Perez v. Sharp, 32 Cal.2d 711, 198 P.2d 17 (1948) (texts and authorities used by court in opinions determining constitutionality of statute prohibiting interracial marriages). Section 450 will neither broaden nor limit the extent to which a court may resort to extrinsic aids in determining the rules of law that it is required to notice. Nor will Section 450 broaden or limit the extent to which a court may take judicial notice of any other matter not specified in Section 451 or 452.

(Cal. Law Revision Com. com., Evid. Code (2010 ed.) foll. § 450.) Reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*People v. Williams* (1976) 16 Cal.3d 663, 667-668*; Davis v. Cordova Recreation & Park Dist.* (1972) 24 Cal.App.3d 789, 796.)

The federal rule that most closely corresponds to California Evidence Code section 450 is rule 201 of the Federal Rules of Evidence, which is titled "Judicial Notice of Adjudicative Facts." The Advisory Committee's Note to the rule contains a lengthy discussion of the difference between adjudicative and legislative facts, reading, in part:

> This is the only evidence rule on the subject of judicial notice. It deals only with judicial notice of "adjudicative" facts. No rule deals with judicial notice of "legislative" facts. . . .
>
> The omission of any treatment of legislative facts results from fundamental differences between adjudicative facts and legislative facts. Adjudicative facts

are simply the facts of the particular case. Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body. The terminology was coined by Professor Kenneth Davis in his article An Approach to Problems of Evidence in the Administrative Process, 55 Harv.L.Rev. 364, 404-407 (1942). The following discussion draws extensively upon his writings. In addition, see the same author's Judicial Notice, 55 Colum.L.Rev. 945 (1955); Administrative Law Treatise, ch. 15 (1958); A System of Judicial Notice Based on Fairness and Convenience, in Perspectives of Law 69 (1964).

The usual method of establishing adjudicative facts is through the introduction of evidence, ordinarily consisting of the testimony of witnesses. If particular facts are outside the area of reasonable controversy, this process is dispensed with as unnecessary. A high degree of indisputability is the essential prerequisite.

Legislative facts are quite different. As Professor Davis says:"My opinion is that judge-made law would stop growing if judges, in thinking about questions of law and policy, were forbidden to take into account the facts they believe, as distinguished from facts which are 'clearly * * * within the domain of the indisputable.' Facts most needed in thinking about difficult problems of law and policy have a way of being outside the domain of the clearly indisputable." A System of Judicial Notice Based on Fairness and Convenience, supra, at 82.

. . .

What the law needs at its growing points is more, not less, judicial thinking about the factual ingredients of problems of what the law ought to be, and the needed facts are seldom 'clearly' indisputable." Davis, supra, at 83.

> Professor Morgan gave the following description of the methodology of determining domestic law: "In determining the content or applicability of a rule of domestic law, the judge is unrestricted in his investigation and conclusion. He may reject the propositions of either party or of both parties. He may consult the sources of pertinent data to which they refer, or he may refuse to do so. He may make an independent search for persuasive data or rest content with what he has or what the parties present. * * * [T]he parties do no more than to assist; they control no part of the process." Morgan, Judicial Notice, 57 Harv.L.Rev. 269, 270-271 (1944).
>
> This is the view which should govern judicial access to legislative facts. It renders inappropriate any limitation in the form of indisputability, any formal requirements of notice other than those already inherent in affording opportunity to hear and be heard and exchanging briefs, and any requirement of formal findings at any level. . . .

(Advisory Committee Note to Rule 201 of the Federal Rules of Evidence, subdivision (a).)

Courts in California have taken up the distinction between adjudicative and legislative facts.

> 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].) "Facts relevant to the determination of statutory meaning are legislative in kind because they help the tribunal determine the content of law." (*People v. Aston* (1984) 162 Cal.App.3d 658, 216 Cal.Rptr 754, 759.)

Since the Court is authorized by Evidence Code section 450 to take judicial notice of the law, including background information useful in construing statutes, the Court may take judicial notice of the materials presented here. The Court should exercise its discretion to do so, since the materials will assist the court in determining the intent of the legislature in enacting the Public Records Act, and will assist the court in understanding the real-world consequences of the construction it adopts.

B. Judicial Notice of the Requested Materials Will Not Prejudice Real Party, Since Real Party Will Have an Adequate Opportunity to Respond.

Since Petitioner is requesting judicial notice at the time of the filing of the petition, Real Party County of Orange will have a sufficient opportunity to respond in its return brief to Petitioner's arguments based on judicially-noticed materials.

C. The Legislative History of AB 2799 Should be Judicially Noticed Because It Contains Legislative Facts Relevant to the Statutory Interpretation of Section 6254.9.

> In a search to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative

> materials, including committee reports, underlying the enactment of a statute.

(*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400 fn. 8; *See also Coopers & Lybrand v. Superior Court* (1989 212 Cal.App.3d 524, 535, fn. 7.) The legislative history of a statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose. (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 841.)

Petitioners request that the Court take judicial notice of an excerpt of the legislative history of A.B. 2799, 1999-2000 Legislative Session. This bill added section 6253.9 to the Government Code as part of the Public Records Act. Section 6253.9 requires public agencies disclose electronic copies of public records in the format in which the agency keeps or distributes them to others.. The excerpt requested for judicial notice shows that a main purpose behind the amendment was to avoid the situation in which Petitioner complains of now: ***The requested records could be copied onto a DVD in electronic format for a small cost, and the millions of pages of paper records that Orange County is offering as an alternative could be copied only at an exorbitant cost.*** This is essentially the situation described in the section labeled "Stated need for legislation" in the California Bill Analysis prepared for the Senate Judiciary Committee. (Exhibit 1, RJN1-0005.) This history is relevant to the proper interpretation of Gov. Code section 6254.9 as one

component in the overall Public Records Act, as amended by AB 2799.

Petitioner realized the significance of this legislative history only after submitting a motion to the trial court to allow additional briefing in the case. (Petitioner's Appendix at tab 13, PA-0501.) The trial court denied this motion (Statement of Decision at 15, tab 25, PA-1361.), so Petitioner had no opportunity to put this material before the trial court. This material does not relate to proceedings occurring after the issuance of the Statement of Decision.

D. The GIS Needs Assessment Should be Judicially Noticed Because It Contains Legislative Facts Relevant to the Statutory Interpretation of Section 6254.9.

Since "courts may consider whatever materials are appropriate in construing statutes," including "economic and social facts," (Cal. Law Revision Com. com., Evid. Code (2010 ed.) foll. § 450.), the Court may consider selected portions of the GIS Needs Assessment Study prepared by Geographic Technologies Group for Orange County, starting in 2008, attached as Exhibit 2 ("the Study").

The Study is offered not to inform the Court about Orange County's GIS operation in particular, but to illustrate an important information-technology trend in government in general, the trend toward increasing uses for GIS (mapping) technology in government. (*See* Exhibit 2, OC-01011 for a future vision of many GIS-enabled applications, OC-1188 stating that 90% of the information in county databases is location-based, OC-1459 for a

vision that much of the data in other county databases can be geocoded, potentially turning it into mapping data).

The GIS Needs Assessment also shows how crucially important a public record the OC Landbase is. (See Exhibit 2, OC-1029 for a list of county departments expressing a need for mapping services, OC-1215 for four important departments (Assessor, OC Comm. Resources, Registrar of Voters, OC Parks) currently using the OC Landbase data on a daily basis, OC-1455 for a statement that the OC Landbase is the most important dataset in the county.)

This information is important to the statutory interpretation of Government Code section 6254.9 because it shows how important computer land-parcel mapping data is to California counties. Though there are alternative public-record sources for most individual pieces of information contained in county GIS parcel databases, they don't provide the combination of comprehensiveness and organization that is found in the GIS parcel database. For the same reasons that GIS parcel databases are important to counties, they are important to the public. Denying this public record to the public under the public records act would deny the public access to an important source of information about the public's business.

Petitioner would have included these materials as appendices to the additional briefing it requested (Petitioner's Appendix at tab 13, PA-0501.), but the trial court denied the motion for additional

briefing. (Statement of Decision at 15, tab 25, PA-1361.) This material does not relate to proceedings occurring after the issuance of the Statement of Decision.

E. The Legislative History of Proposition 59 from the 2004 California General Election Should be Judicially Noticed Because It Contains Legislative Facts Relevant to the Proper Interpretation of Relevant Provisions of the California Constitution.

Proposition 59, approved overwhelmingly by the voters in the 2004 general election, added two provisions to the California Constitution which are important in this case, because they bear strongly on the statutory interpretation of Gov. Code section 6254.9. The first relevant constitutional provision is Article I, section 3, subdivision (b), which provides that "The people have the right of access to information concerning the conduct of the people's business. . . ." The second relevant constitutional provision is Article I, section 3, subdivision (b), paragraph 2, which requires that:

> A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

These two constitutional provisions require the Court to construe section 6254.9, which contains a limitation on the right of access to public information, narrowly.

The Official Voter Information Guide for Proposition 59, published during the California General Election of 2004, serves as

part of the legislative history of Proposition 59. (*See, e.g. Strauss v. Horton* (2009) 46 Cal.4th 364, 400; *Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 229.) This legislative history is relevant here because it demonstrates an intent on the part of the People of California to "create a high hurdle for restrictions on your right to [public] information." As argued above, judicial notice of legislative history is proper when it will shed light on the intent of the legislators.

Petitioner would have included these materials as appendices to the additional briefing it requested, but the trial court denied the motion for additional briefing. (Statement of Decision at 15, tab 25, PA-1361.) This material does not relate to proceedings occurring after the issuance of the Statement of Decision.

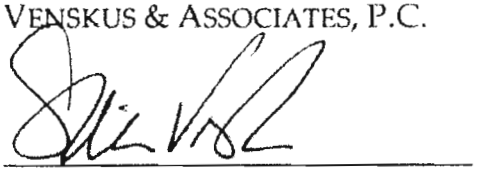
III. Conclusion

Existing law allows the Court to take judicial notice of legislative facts, especially when it is interpreting statutes. Such judicial notice would not prejudice Real Party, who will have adequate opportunity to respond any argument made by Petitioner citing these materials. The legislative history of Gov. Code section 6253.9 and of Proposition 59, and a small portion of the GIS Needs Assessment Study will contribute to the spectrum of information this Court may wish to consider when answering the question presented in this case, namely, whether the "computer software" as defined in Gov. Code section 6254.9 includes data.

Dated: August 25, 2010

Respectfully submitted,

VENSKUS & ASSOCIATES, P.C.



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

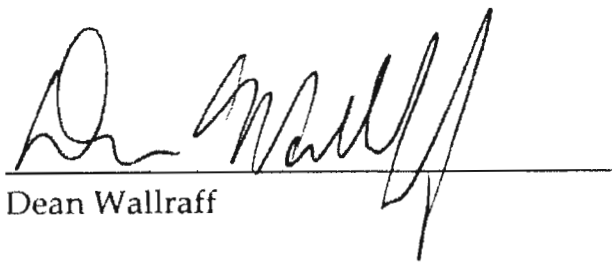
Declaration of Dean Wallraff

I, Dean Wallraff, make this declaration from my personal knowledge and, if called as a witness, could and would testify to the following:

1. I am the law clerk of Sabrina Venskus, attorney of record in this case.
2. On August 7, 2010 I accessed Westlaw via the Internet, and obtained the following portions of the Legislative History of A.B. 2799, 1999-2000 Legislative Session, of which true and correct copies are contained in Exhibit 1:
    a. Bill History (Exhibit 1 at RJN1-0001—RJN-0002.)
    b. Bill Analysis Prepared for June 27, 2000 Meeting of Senate Judiciary Committee (Exhibit 1 at RJN1-0003—RJN-0010.)
    c. Bill Analysis Prepared for July 6, 2000 Session of California Senate (Exhibit 1 at RJN-0011—RJN-0018.)
    d. Bill Analysis Prepared for July 6, 2000 Session of California Assembly (Exhibit 1 at RJN-0019—RJN-0020.)
3. On December 10, 2009, in response to Petitioner's Request for Production of Documents, Respondent County of Orange produced a document entitled "GIS Needs Assessment Study," a true and correct copy of portions of which are attached as Exhibit 2.
4. On May 7, 2010 I accessed the official Web site of the California Secretary of State to obtain the official ballot

information provided to the public for the 2004 general election concerning Proposition 59. The Web site I accessed was at http://vote2004.sos.ca.gov/voterguide/propositions/prop59-arguments.htm. Exhibit 3 contains a true and correct copy of the information contained on that Web page.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. This declaration was made on August 25, 2010 at Los Angeles, California.



Dean Wallraff

Exhibit 1

California Bill History, 1999-2000 Regular Session, **Assembly Bill 2799**
1999-2000

California Assembly

1999-2000 Regular Session

COMPLETE BILL HISTORY

BILL NUMBER: **A.B. No. 2799**

AUTHOR: Shelley

TOPIC: Public records: disclosure.

TYPE OF BILL:

Inactive

Non-Urgency

Non-Appropriations

Majority Vote Required

State-Mandated Local Program

Fiscal

Non-Tax Levy

BILL HISTORY

2000

Sept. 30 Chaptered by Secretary of State - Chapter 982, Statutes of 2000.

Sept. 29 Approved by the Governor.

Sept. 7 Enrolled and to the Governor at 9:30 a.m.

Aug. 25 Senate amendments concurred in. To enrollment. (Ayes 72. Noes 2. Page 8364.)

Aug. 25 In Assembly. Concurrence in Senate amendments pending. Assembly Rule 77 suspended.

Aug. 25 Read third time, passed, and to Assembly. (Ayes 34. Noes 0. Page 5992.)

Aug. 18 From committee: Be placed on second reading file pursuant to Senate Rule 28.8. Read second time. To third reading.

July 6 Read second time, amended, and re-referred to Com. on APPR.

July 5 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).

June 22 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.

June 22 Read second time, amended, and re-referred to Com. on APPR.

June 8 Referred to Com. on JUD.

May 25 In Senate. Read first time. To Com. on RLS. for assignment.

May 25 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)

May 24 Read second time. To third reading.

May 23 Read second time and amended. Ordered returned to second reading.

May 22 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).

May 8 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).

May 2 Re-referred to Com. on G.O.

Apr. 27 Joint Rule 61 (b)(5) suspended.

Apr. 27 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.

Apr. 24 In committee: Set second hearing. Failed passage. Reconsideration granted.

Apr. 10 In committee: Set, first hearing. Hearing canceled at the request of author.

Mar. 16 Referred to Com. on G.O.

Feb. 29 From printer. May be heard in committee March 30.

Feb. 28 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

CA Assem. B. Hist., 1999-2000 A.B. 2799
END OF DOCUMENT

California Bill Analysis, Senate Committee, 1999-2000 Regular Session,

Assembly Bill 2799

June 27, 2000

California Senate

1999-2000 Regular Session

SENATE JUDICIARY COMMITTEE

Adam B. Schiff, Chairman

1999-2000 Regular Session

AB 2799

Assembly Member Shelley

As Amended June 22, 2000

Hearing Date: June 27, 2000

Government Code

GMO:cjt

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by this Committee last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into **AB 2799**.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;

b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;

d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;

e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;

f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

a) the agency is required to provide information in any electronic format in which it holds the information; and

b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, **AB 2799** includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.

b) If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Su-

pervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency"obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's in-

vestigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so na?ve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

9. Withdrawn opposition

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties;

California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen), see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)

CA B. An., A.B. 2799 Sen., 6/27/2000
END OF DOCUMENT

California Bill Analysis, Senate Floor, 1999-2000 Regular Session, **Assembly Bill 2799**

July 6, 2000

California Senate

1999-2000 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

THIRD READING

Bill No: **AB 2799**

Author: Shelley (D), et al

Amended: 7/6/00 in Senate

Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 6/29/00

AYES: Escutia, Morrow, O'Connell, Peace, Schiff

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 70-4, 5/25/00 - See last page for vote

SUBJECT: Public records: disclosure

SOURCE: California Newspaper Publishers Association

DIGEST: This bill revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

ANALYSIS: The Public Records Act allows an agency to provide computer data in any form determined by the agency.

The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

1. Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;

2. Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

3. Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;

4. Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;

5. Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;

6. Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

This bill is a blend of two bills that were passed by the Legislature last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into **AB 2799**.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public re-

cords or to the use of electronic records by public agencies.

Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

1. the agency is required to provide information in any electronic format in which it holds the information; and

2. the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

1. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

2. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

This bill requires a public agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, the public agency is required to tell the requester that the information is available in electronic format.

3. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money, may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such

a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, **AB 2799** includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

4. Any agency would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

1. If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.

2. If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet.

Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency"obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for

which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so na?ve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

"Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

Related Pending Legislation:

SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/14/00)

California Newspaper Publishers Associaiton (source)

Orange County Register

State Franchise Tax Board

1st Amendment Coalition

OPPOSITION: (Verified 8/14/00)

County of Orange

ARGUMENTS IN SUPPORT: According to the author's office, with the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

ARGUMENTS IN OPPOSITION: The County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

ASSEMBLY FLOOR:

AYES: Aanestad, Alquist, Aroner, Baldwin, Bates, Battin, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice,

Honda, House, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Mazzoni, McClintock, Migden, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

NOES: Ackerman, Ashburn, Brewer, Kaloogian

RJG:jk 8/16/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CA B. An., A.B. 2799 Sen., 7/06/2000
END OF DOCUMENT

California Bill Analysis, Assembly Floor, 1999-2000 Regular Session,
Assembly Bill 2799
July 6, 2000

California Assembly

1999-2000 Regular Session

CONCURRENCE IN SENATE AMENDMENTS

AB 2799 (Shelley)

As Amended July 6, 2000

Majority vote

ASSEMBLY: 70-4 (May 25, 2000) SENATE: 34-0 (August 25, 2000)

Original Committee Reference: G.O.

SUMMARY: Revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. Requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that PRA may not be construed to permit an agency to delay or obstruct inspection or copying of public records.

The Senate amendments provide that the cost of duplicating an electronic public record must be limited to the direct cost of producing a copy of a record in electronic format, except that the requestor must bear the cost of production if the public agency would have to produce the record at time when the record is not regularly scheduled to be available, or if the request would require data compilation or programming to produce the record.

EXISTING LAW:

1)Defines "public record" to include 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.

2)Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to in-

spect any public record, except as specifically provided.

3)Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.

4)Requires that computer data be provided in a form determined by the agency.

AS PASSED THE ASSEMBLY, this bill deleted the requirement that public records kept on computer be disclosed in a form determined by the public agency. This bill required a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to specified guidelines. This bill additionally required an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.

FISCAL EFFECT:

1)Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2)Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS: PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that the agency currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Analysis Prepared by: George Wiley / G. O. / (916) 319-2531

FN: 0006488

CA B. An., A.B. 2799 Assem., 7/06/2000
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Exhibit 2

County of Orange, California

GIS Needs Assessment Study

In cooperation with:

Assessor
Auditor-Controller
Clerk Recorder
OC Community Resources
OC Dana Point Harbor
OC Health Care Agency
OC Parks
OC Waste and Recycling
Offices of Public Defender
Probation
OC Public Works
Agricultural Commissioner
Facilities Operations
Flood Control
Geomatics and Land Information Systems
Operations and Maintenance
Planning and Administration
Code Enforcement Unit
Project Management
Road
Watersheds
Registrar of Voters
Sheriff and Emergency Management Bureau
Social Services Agency
Treasurer – Tax Collector

GIS Needs Assessment Study
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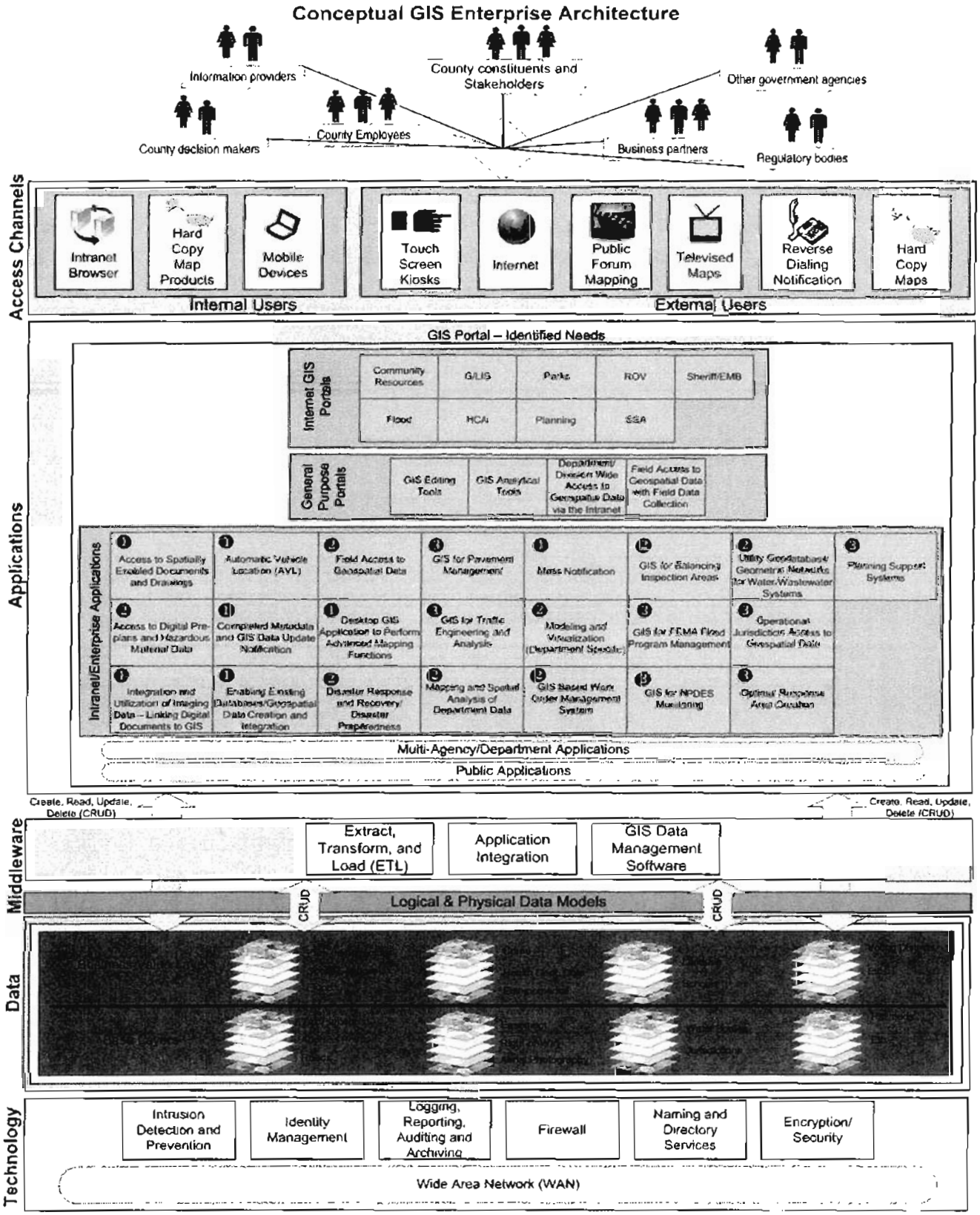

Conceptual GIS Enterprise Architecture
Information providers
County constituents and Stakeholders
Other government agencies
County decision makers
County Employees
Business partners
Regulatory bodies
Access Channels
Intranet Browser
Hard Copy Map Products
Mobile Devices
Touch Screen Kiosks
Internet
Public Forum Mapping
Televised Maps
Reverse Dialing Notification
Hard Copy Maps
Internal Users
External Users
Applications
GIS Portal – Identified Needs
Internet GIS Portals
Community Resources
G/LIS
Parks
ROV
Sheriff/EMB
Flood
HCA
Planning
SSA
General Purpose Portals
GIS Editing Tools
GIS Analytical Tools
Department/ Division Wide Access to Geospatial Data via the Intranet
Field Access to Geospatial Data with Field Data Collection
Intranet/Enterprise Applications
Access to Spatially Enabled Documents and Drawings
Automatic Vehicle Location (AVL)
Field Access to Geospatial Data
GIS for Pavement Management
Mass Notification
GIS for Balancing Inspection Areas
Utility Geodatabase/ Geometric Networks for Water/Wastewater Systems
Planning Support Systems
Access to Digital Pre-plans and Hazardous Material Data
Completed Metadata and GIS Data Update Notification
Desktop GIS Application to Perform Advanced Mapping Functions
GIS for Traffic Engineering and Analysis
Modeling and Visualization (Department Specific)
GIS for FEMA Flood Program Management
Operational Jurisdiction Access to Geospatial Data
Integration and Utilization of Imaging Data – Linking Digital Documents to GIS
Enabling Existing Databases/Geospatial Data Creation and Integration
Disaster Response and Recovery/ Disaster Preparedness
Mapping and Spatial Analysis of Department Data
GIS Based Work Order Management System
GIS for NPDES Monitoring
Optimal Response Area Creation
Multi-Agency/Department Applications
Public Applications
Create, Read, Update, Delete (CRUD)
Create, Read, Update, Delete (CRUD)
Middleware
Extract, Transform, and Load (ETL)
Application Integration
GIS Data Management Software
CRUD
Logical & Physical Data Models
CRUD
Data
Technology
Intrusion Detection and Prevention
Identity Management
Logging, Reporting, Auditing and Archiving
Firewall
Naming and Directory Services
Encryption/ Security
Wide Area Network (WAN)

History

County of Orange departments rely on information to carry out their various missions for public safety, land planning, social services, infrastructure management, taxation, and stewardship of natural and man-made resources. Nearly 90% of the information is location-based, meaning that each information item pertains to a place on the earth. This fact has given rise to the extensive adoption of Geographic Information Systems (GIS) to improve the efficiency and effectiveness of governmental and private sector operations.

The County has been using GIS since the early 1990's to improve the management and analysis of geographic related information. The Geographic Information Systems (GIS) Applications and Mapping Services Unit was formed in late August of 1992 by the County department currently known as the OC Public Works/Geomatics/Land Information Systems (G/LIS) Division. This unit is responsible for analysis, development, construction and quality control of GIS application output and products, providing thematic mapping services and graphic analysis projects for various entities within the County structure. An example of the list of clients requesting GIS analysis and/or mapping services includes:

- The Orange County Board of Supervisors
- County Executive Management
- OC Parks
- OC Public Works
- OC Engineering - Operations and Maintenance
- OC Engineering - Flood Control Program
- OC Planning and Development Services

G/LIS division owns an Oracle 10G geo-spatial database and the Landbase data. ArcGIS tool from ESRI is used to for GIS analysis and mapping projects. The G/LIS Landbase Information Systems Section is where the County Landbase is generated and updated. This unit prepares and maintains an information system consisting of a very accurate; parcel-level digital base map containing over 665,000 parcels. The Landbase contains street centerlines, right-of-way lines, and parcel boundaries, linked to text information, such as owner name, street address, and assessor parcel number. The foundation of this system is the County Control Network consisting of over 2400 control points on an approximate half-mile grid. This strong foundation makes the County Landbase very accurate and allows new map information to be added and increase the accuracy of the Landbase.

The County of Orange Landbase is registered to the California Coordinate System, North American Datum 83. The foundation of this system is the County Geodetic Control Network consisting of over 2700 control points on an approximate half-mile grid. The County Landbase is updated on a daily basis. Final (tract) maps and parcel maps are committed to the Landbase within 4-6 weeks of recordation. Other land information

Introduction

The County of Orange has identified and utilized technology as a means for improving its business processes, infrastructure, services, information and decision-making. County departments rely on information to carry out their various missions for public safety, land planning, social services, infrastructure management, taxation, and stewardship of natural and man-made resources. Nearly 90% of the information is location-based, meaning that each information item pertains to a place on the earth. This fact has given rise to the extensive adoption of Geographic Information Systems (GIS) to improve the efficiency and effectiveness of governmental and private sector operations. The county has recognized the value and importance of an enterprise GIS, thereby taking the necessary action to ensure that its implementation of GIS is efficient, effective, and viable.

As the acquisition, management, and dissemination of information continue to become increasingly valuable functions within local governments, so too has GIS proven to be increasingly valuable. The County of Orange is no exception to this observation, as it too has benefited from its preliminary implementation of GIS. GIS and related output (e.g. maps and analysis) has already contributed to improve the county's business processes, information exchange, and decision-making.

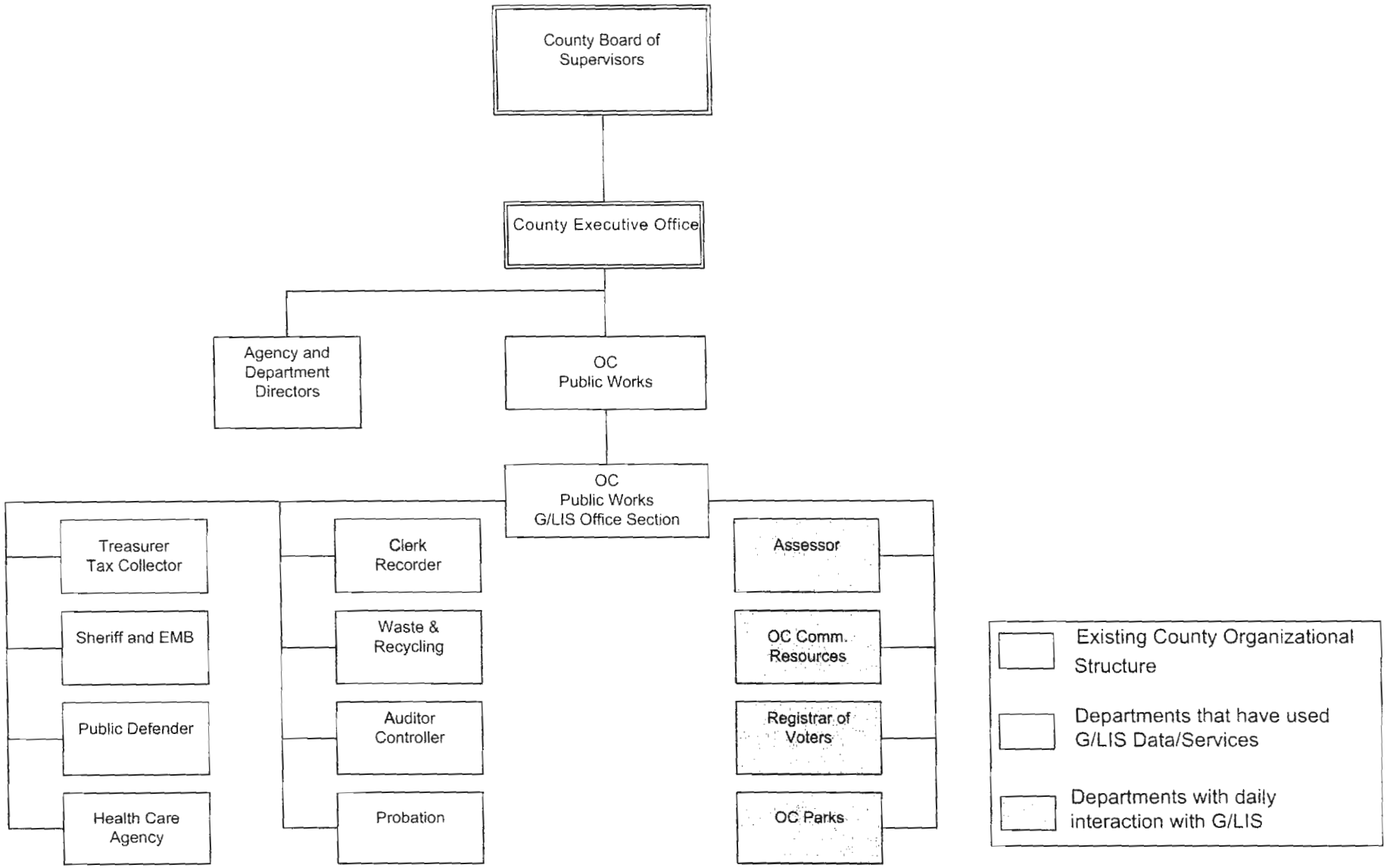
Positive, yet pragmatic, vision, mission, and goals will prove to be critical as the county proceeds with its GIS implementation. The benefits of GIS, especially an optimal return on investment (ROI) and improved efficiency and effectiveness, can only be realized if GIS is adopted and integrated on a countywide basis.

GIS Program Vision

A countywide vision statement was created based on interviews with staff throughout the county. Based on this feedback, the proposed GIS vision statement of the county is:

> *"The Enterprise-wide Geographic Information System (GIS) will establish an organizational structure that allows county staff to effectively maintain and use high-quality geo-spatial data, while providing for countywide GIS administration and accountability. The Orange County GIS will encourage and value intra-departmental sharing of information resources and coordination while focusing on coordination among cooperating external agencies. Of primary importance is respect for privacy of individuals and choice of organizations to protect sensitive and proprietary data. The GIS will enable Orange County citizens to access data pertinent to them thus providing better customer service and government transparency."*

Current Organizational Structure



Geomatics and Land Information Systems (G/LIS) Division

Section Outline

- **Division Overview**
- **GIS Needs Assessment**
  - GIS Needs
- **Existing GIS Conditions**
  - Governance of GIS
  - Hardware & Software
- **Divisional GIS Gap Analysis**
  - GIS Data Layer Inventory
  - GAP Analysis Chart

Division Overview

The Division of Geomatics and Land Information Systems (G/LIS) within OC Public Works was created in 1960 under the name Survey Department within the Floods and Roads Division. In the early 1980's the department was re-designated as the CAD/GIS department. In 1991 the CAD/GIS division was renamed as the Division of Geomatics and Land Information Systems and was relocated under the OC Public Works Department. The G/LIS division serves a number of critical needs for the county. G/LIS functions as a survey support unit for engineering projects, reviews subdivision map updates, maintains the counties horizontal and vertical controls system of benchmarks, as well as providing public support with research and filing process of survey related tasks. G/LIS defines itself as "a multi-disciplinary approach to integrated technology systems of spatially-referenced information, including land boundaries, geodetic positioning, photogrammetry, remote sensing, cartography and geographic information systems. Geomatics consists of GPS, computers, software and other related technology used to capture data, maintain, analyze, manipulate and display spatially-referenced information."

The stated mission of the G/LIS division is "to provide quality surveying and mapping services which enhance the public welfare and support the OC Public Works mission and to provide these services in a courteous and professional manner." In addition to engineering and public support the G\LIS division has a substantial GIS role within the county. G/LIS oversees and maintains the county's parcel level Land Information System or "Landbase". This includes, parcel features and attribution, government entity boundaries, street centerlines and county facilities boundaries. At present the G/LIS division has a GIS Application unit located within the Office section designed to provide full service GIS support to all county departments with a focus on supporting Public Works initiatives including contracting and design of specialized GIS applications.

The G/LIS division employs 99 full time staff broken up into four (4) sub-units. The task and mandate of the individual divisions are listed below.

- **Office Section (22 staff)**

  G/LIS services are contracted out to other county departments/divisions and the private sector, including Surveying Services, Aerial Photography, Digital Ortho-photography, Mapping, and GIS work. Contract Administration administers those contracts.
  - Land Information Systems (Maintenance and update of the county Landbase data set)
  - Geodetic Control
  - G.I.S. Mapping (GIS support to other county departments)
  - Business IT
  - Technical support

- **Field Survey Section (32 staff)**
  - Alignment Analysis
  - Cadastral Surveys
  - Claims Investigation Surveys
  - Construction Surveys
  - Control Surveys
  - Deformation Surveys
  - GPS Surveys
  - High Definition Surveys
  - Hydrographic Surveys
  - Legal Descriptions
  - Pavement Management
  - Photogrammetric Control
  - Topographic Surveys
  - Volume/Quality Calculations

- **Boundary Section (26 staff)**
  - Subdivision Map Checking
  - Public Services/Survey Records
  - Boundary Analysis
  - Boundary Annexations

- **Rights-of-Way Engineering Section (11 staff)**
  - Process real property transactions
  - Determination of parcel boundaries and acreage
  - Preparation and review of legal descriptions and maps
  - Review and assessment of existing title matters
  - Maintain a public service counter and the real property records

GIS Needs Assessment

 GIS Needs

There are generally three tiers of GIS users. A Tier 1 - Flagship GIS user typically conducts GIS administration and coordination at the enterprise level (county wide or department wide), has access to a fully functioning GIS toolset to create and maintain enterprise data, and manages the enterprise database. A Tier 2 - Analytical GIS user focuses on data analysis, complex querying and data modeling, along with department level data maintenance. A Tier 3 - Browser GIS user requires only general browsing GIS data functions to create reports, query standard data sets, create tasks like mailing labels, and produce maps.

G/LIS is a very significant and key contributor in the implementation of enterprise-wide GIS throughout the county. Outside of an enterprise GIS implementation, the structure and usage of GIS within G/LIS is excellent and needs little modification. It is recommended that the two main GIS functions of the division stay the same with a few minor improvements. G/LIS currently creates and maintains the most essential data set in the county (Landbase dataset), and it is recommended that G/LIS continue to maintain and update this data set. This is a large and highly accurate data set and is the foundation for much of the counties GIS. G/LIS should work closely with the future enterprise GIS governance authority to provide this spatially accurate GIS data for countywide use in mapping, design and modeling. Upon the initial enterprise GIS implementation, frequent coordination between the future enterprise GIS governance authority and G/LIS is mission critical. In the GIS System Design phase of this project, enterprise governance will be discussed in detail. The division should work closely with the CEO-IT to integrate the selected enterprise GIS governance model for the countywide authority of GIS data models and processes into its daily departmental workflows.

sets may be maintained in other software but will need to be replicated to the central data repository. The suggested structure and technology is described in detail in later chapters.

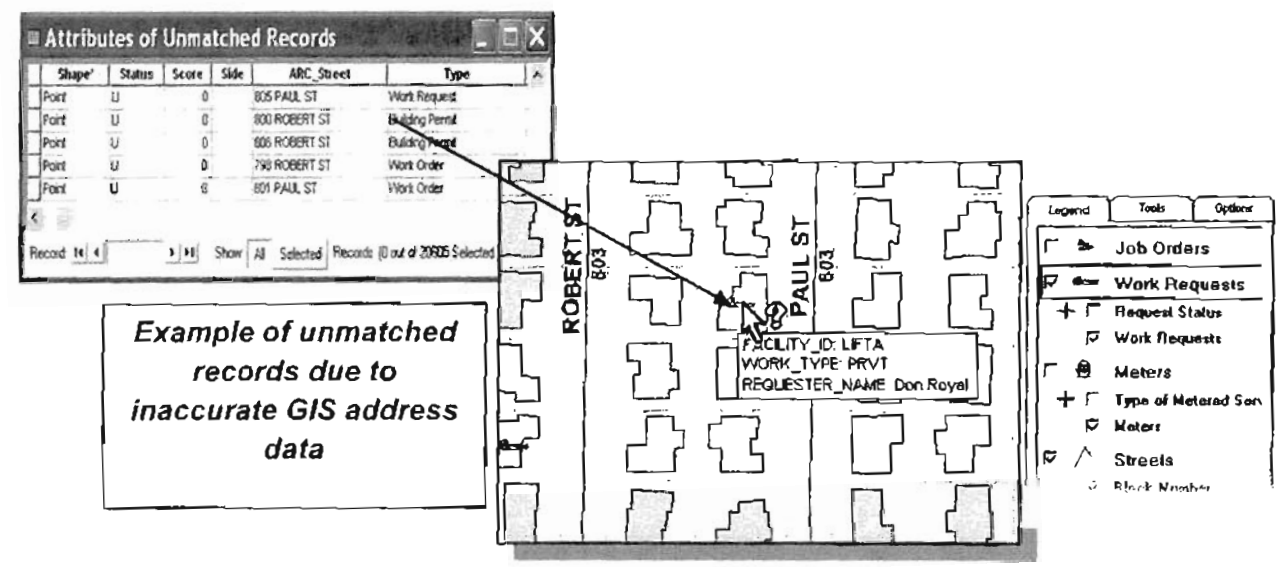
GIS Need

Enabling Existing Databases – Geospatial Data Creation and Data Integration, Emphasizing the Creation of a Countywide Address Point Layer

As stated in the Governance portion of the section, G/LIS currently maintains the Landbase as its primary parcel-level digital basemap (which contains over 665,000 parcels). An important attribute, the records within Landbase have an address as an informational geographic location base. As such, it is imperative that the county pursue the establishment of a countywide address point GIS data layer for geocoding purposes, as outlined below. Once accomplished existing data residing in other databases countywide can then be geocoded to their actual location (preferably - physical structure) within the county (if address in an attribute contained within that database.

Are accurate address points and street centerlines that important?

Why do we need address points that are so accurate? Why are we so concerned with cleaning up the address database? The county is faced with the challenge of accurately mapping the location of records throughout the county (using geocoding as a. If an accurate address point layer does not exist, unfavorable results will occur when attempting to map records using an address. Lack of an accurate address point layer will often result in unmatched records. The organization will then need to invest additional time and resources trying to determine the location of the information manually.



2) Place the address layer in the central GIS repository – data should no longer be maintained in separate "stovepipes" of data storage per department (as described earlier), but should be moved to the central GIS repository and maintained as a geodatabase. By keeping the address point data layer in the central geodatabase repository, all county departments will have immediate access to the latest set of countywide addresses.
3) Identify gatekeepers that have the authority to update the layer (county only) – only a select few employees should have the ability to add, change, or delete records from the address point data layer. An initial recommendation is to have a representative from the OC Geomatics, Landbase maintenance unit, and the future enterprise GIS governance authority be given the training and capability to edit the address point data layer. The future enterprise GIS governance authority in should review each entry to insure that GIS and enterprise address database rules and compliance are met.
4) Provide an address update GIS application – this application should allow for the update of the critical GIS layers. This application is described later in this section.
5) Integrate the process with core applications such as Landbase – optimally the address point GIS application will have integration points with information from enterprise applications such as Landbase.

**Future chapters of the Implementation Plan will address possible methods for Inter-Agency agreements with outside entities within Orange County.

One of the big impetuses for this layer is integration with existing systems. The centerpiece for this integration should be the Landbase system. The other IT systems should use the address point layer data to populate their address tables and validate address data entry. It is assumed that this process will not only validate the current address and create new address points but also clean up Landbase address records and integrate with the enterprise system. Not much of this has been accomplished and participation by Landbase and some programmatic integration will be required.

Address Validation and Landbase Integration

It is highly recommended that the county create and validate a digital address point GIS data layer. Once the county has gone through many of the appropriate steps to create the current address point layer, the following information is included as documentation on the optimal process for 100% validation of the layer. Address information stored within Landbase should be used as a source for address point creation and validation.

Once address points are validated and finalized, a GIS based application should be used by identified gatekeepers to update all new addresses and create or modify all address points. Optimally, the GIS

GIS Need

Division-Wide Access to Geospatial Data

A key need identified by OC personnel was increased and improved access to shared GIS data within the county. This includes the most recent parcel, address, and street centerline data as well as high-resolution ortho-photography. Using the most recent, accurate GIS layers provides staff members with an invaluable tool for everyday tasks. OC Public Works currently uses CityGIS™ but it offers only limited control over the data layers available and is currently license limited. CityGIS™ is an outsourced solution with county data stored offsite and managed offsite. A more functional, countywide application is needed. Collaboration with all departments/ divisions will be instrumental in establishing GIS as a complementary technology. Initial efforts should be aimed at increasing GIS awareness within the county, allowing staff to become familiar with the efficiencies that can be gained using GIS for mapping, analyzing, and tracking information.

This application has been hugely successful for Orange County. However, more targeted applications need to be deployed for specific functions within the organization. The centralized database should serve as a springboard for a variety of targeted applications.

Application to Meet Need

Intranet GIS Data Browser

The county should implement the recommended Intranet GIS Data Browser to provide all staff with access to mapping, imaging, and spatial analysis functionality. This application will serve as the primary GIS application for the entire county and enable staff to accomplish about 90% of their GIS tasks. These tasks will include the quick query and search of data; as well as, more intricate uses such as citizen notifications and map production. Departmental Intranet GIS Data Browser solutions are web or service based GIS applications that provide data dissemination services by departmental function across an Intranet. Intranet browsers represent a step forward in enterprise-wide GIS technology as it offers a "right-sized" set of spatial analysis tools, geographical viewing and map production tools, as well as external database links. The departmental browser should include:

- Advance Search Criteria
- Automated Mailing Labels
- Customized Departmental Query Control
- On-Line Help and Tutorial
- Enhanced Text Placement
- Link to external web Databases
- Easy-to-Use interface
- Citizen Notifications

The county's intranet site should be configured to present users with pertinent GIS data and custom defined queries for easy end-user interaction.

Exhibit 3

Propositions

Title and Summary | Analysis | Text of Proposed Laws

ARGUMENTS AND REBUTTALS

Proposition 59

Public Records, Open Meetings.
Legislative Constitutional Amendment.

ARGUMENT in Favor of Proposition 59

Proposition 59 is about open and responsible government. A government that can hide what it does will never be accountable to the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us.

Everyone needs access to information from the government. Why was a building permit granted, or denied? Who is the Governor considering for appointment to a vacancy on the County Board of Supervisors? Why was the superintendent of the school district fired, and who is being considered as a replacement? Who did the City Council talk to before awarding a no-bid contract?

People all across the State ask these questions—and dozens of others—every day. And what they find out is that answers are hard to get.

California has laws that are supposed to help you get answers. But over the years they have been eroded by special interest legislation, by courts putting the burden on the public to justify disclosure, and by government

ARGUMENT Against Proposition 59

This measure does not go far enough in guaranteeing the people access to information and documents possessed by state and local government agencies.

In fact, this measure only provides for a general *"right of access to information concerning the conduct of the people's business"* and that laws in California *"shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."*

Laws are construed (i.e., interpreted) by officials charged with following them—and by courts when asked. The rule of interpretation contained in this measure would probably have a very limited effect.

Indeed, this measure explicitly states that it does not supersede or modify any *"right to privacy guaranteed by Section 1"* of Article I of the California Constitution.

While a right to privacy—especially against government intrusion-is critical in today's society—government employee groups are using the state constitution's "right to privacy" to hide the amount of

officials who want to avoid scrutiny and keep secrets. Proposition 59 will help reverse that trend.

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.

At the same time, Proposition 59 ensures that private information about ordinary citizens will remain just that—private. It specifically says that your constitutional right to privacy won't be affected.

You have the right to decide how open your government should be. That's why Proposition 59 was unanimously passed by the Legislature and it is the reason widely diverse organizations support the Sunshine Amendment, including the American Federation of State, County and Municipal Employees and the League of California Cities.

As James Madison, a founding father and America's fourth President, said: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives." Tell the government that it's ordinary citizens—not bureaucrats—who ought to decide what we need to money, benefits, and perks they receive at public expense!

Proposition 59 may be better than nothing, but it does not go far enough. The question is whether to vote "yes" and hope for more or vote "no" and demand more.

GARY B. WESLEY, *Attorney at Law*

REBUTTAL to Argument Against Proposition 59

Mr. Wesley's skepticism of open government laws is understandable. Several years ago, when he sued his city council under the open meeting law alleging it had illegally used a closed session to discuss a topic not mentioned on the agenda, the court would not let him question the council members about what they had discussed behind closed doors.

The court concluded that because the law did not expressly authorize such questioning and because it contained other provisions protecting closed session discussions, government officials could not be asked about what they discussed even to obtain evidence for trial, and even if there was no other way of proving a violation of the law.

In other words, he lost because the court applied the general rule of access narrowly, and the exception allowing secrecy broadly—precisely what Proposition 59 would reverse.

As for privacy, the constitution has never been interpreted to protect the abuse of official authority or the wasting of public resources by anyone, and Proposition 59 will not create a screen for anyone to use in hiding fraud, waste, or other serious misconduct.

On the contrary, Proposition 59 will add independent force to the state's laws requiring government

know. Vote yes on Proposition 59.

MIKE MACHADO, *State Senator*

JACQUELINE JACOBBERGER,
President
League of Women Voters of California

PETER SCHEER, *Executive Director*
California First Amendment Coalition

REBUTTAL to Argument in Favor of Proposition 59

As an attorney who has attempted for many years to use California laws to identify and weed out waste and corruption in local government, I am quite sympathetic to Proposition 59.

It is important, however, for voters to know what Proposition 59 would NOT do.

As written (by the State Legislature), Proposition 59 would continue to exempt from disclosure government records deemed "private" by the courts and would not apply at all to the "confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses . . .".

Voters should also consider that insofar as electing some top persons in government (i.e., having a representative democracy) is key to making career government bureaucrats more accountable, elections (especially for State Assembly, State Senate, and Congress) have been undermined by:

(1) the dependence on private, special interest campaign money (sometimes called "legalized bribes"); and

(2) the self-serving creation (every 10 years) of gerrymandered legislative districts that protect incumbents from competition.

transparency. It will create a window on how all public bodies and officials conduct the public's business, for well or ill, while sparing the dignity and reputations of ordinary people, public employees, and even high officials who have done nothing to merit public censure or concern.

MIKE MACHADO, *State Senator*

THOMAS W. NEWTON, *General Counsel, California Newspaper Publishers Association*

JOHN RUSSO, *City Attorney*
City of Oakland

Moreover, anyone who blindly trusts a computer program to count votes (without any "paper trail" for potential verification) is foolish.

Sadly, we are a long way from having true representative democracy in California—and across America.

Government is getting bigger and becoming more wasteful, insular, and abusive. Proposition 59 would not do much to reverse that alarming trend.

GARY B. WESLEY, *Attorney at Law*

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Back to Top

[Proposed] Order

GOOD CAUSE APPEARING, the Court grants Petitioner's request for judicial notice of the documents attached as exhibits to Petitioner's Request for Judicial Notice filed August 27, 2010.

Dated: _____ _____

Presiding Justice

PROOF OF SERVICE (Court of Appeal) ☐ Mail ☑ Personal Service	FOR COURT USE ONLY
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):* Request for Judicial Notice; Declaration of Dean Wallraff; Accompanying Exhibits; Proposed Order

   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.

      (2) Date mailed:

      (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):*

Form Approved for Optional Use
Judicial Council of California
APP-009 [New January 1, 2009]

www.courtinfo.ca.gov

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:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(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 OF PERSON COMPLETING THIS FORM)