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Orange County Court Rules that Orange County Computer Mapping Data is Not Covered by the Public Records Act

Santa Ana, CA – May 21, 2010 – An Orange County Superior Court judge ruled today that computer mapping data maintained by Orange County is exempt from the California Public Records Act. The PRA says that state and local agencies must provide copies of public records in their possession to members of the public requesting them, and must not charge more than the direct cost of making the copy. Ruling on a suit brought against Orange County by the Sierra Club, Judge James J. Di Cesare held that mapping data maintained by the county, detailing the location and boundaries of legal parcels of land within the county, is software under the definition contained in the PRA. Since the law provides that software is not a public record, the public is not entitled to the parcel mapping data without paying an exorbitant “licensing fee,” according to this ruling.

“This makes no sense at all,” says Dean Wallraff, a former Chair of the Sierra Club Angeles Chapter GIS Committee. “Data is data and software is software. There’s nothing magical about GIS that makes the data into software. It’s as if the judge ruled that a Microsoft Word document file was software because it was part of a document processing system.”

Sierra Club attorney Theresa Labriola of the law firm Venskus & Assoc. indicated that the club is likely to appeal. “The California First Amendment Coalition won a virtually identical case against Santa Clara County in the Court of Appeal last year. We believe that the Santa Clara decision is binding precedent in this case. Orange County successfully argued that the software exception wasn’t addressed by the Santa Clara appeals court, but we think it was. We believe we will win on appeal and will put this argument to rest once and for all.”

According to a recent study, 43 out of the 52 California counties that maintain their land parcel map data in electronic form provide it to the public for the cost of reproduction, as required by the PRA. Of the non PRA-compliant counties, Orange County is by far the most egregious offender, asking \$375,000 for mapping data describing the location and layout of the approximately 640,000 parcels of land in Orange County.

The main reason why Orange County refuses to provide the parcel mapping data, which they call the OC Landbase, to the public under the terms of the PRA is that the county would lose revenue from companies who currently pay hefty fees for the data. Documents filed in the

case show that Orange County has received an average of \$183,530 in annual licensing revenue from the Landbase over the last five years. "These high fees create two levels of access to these public records," according to Wallraff, who is a third-year law student and has worked extensively on the case. "Title companies, real-estate companies and large developers can buy this data, while non-profit environmental organizations can't afford the cost. What's galling is that we've already paid for the Landbase through our taxes. The public owns this data. Why should we have to pay again for what is already ours?"

The Sierra Club needs the parcel data to prepare maps for its conservation campaigns in Orange County. The Club is currently fighting to preserve open space from development at Banning Ranch, Coyote Hills, Orange Hills, and Hobo Aliso, among others. Lore Pekrul, current Chair of the Sierra Club Angeles Chapter GIS Committee states "we're at a disadvantage relative to the big developers when we prepare maps showing land being targeted for development in Orange County. They have parcel data, which lets them accurately depict the various land boundaries, and we can't afford it."

In 2004 the California voters passed Prop. 59, which created a new civil right by adding language to the California Constitution stating that "The people have the right of access to information concerning the conduct of the people's business," and that statutes should be narrowly construed if they limit the rights of access. "The Orange County court didn't follow the California Constitution," says Labriola. "The Constitution required it to interpret the PRA's definition of software narrowly since the definition limits access to information. Both the California Attorney General, in his official 2005 opinion on the subject, and the Santa Clara trial court said that parcel map data wasn't software under the definition in the PRA. But the court opted for a broad interpretation of the definition so that it includes all GIS data."

According to Wallraff, the most troublesome thing about the court's reasoning is that it could easily be expanded. He worries that "this rationale could be used to justify withholding all computer data from public scrutiny. Even though the PRA expressly provides that computer data consisting of public-record information must be disclosed, the software definition is an exception that could eat the rule. If this court can decide that GIS data is software, another court could decide that accounting data is software. And so on. We're just hoping that the Court of Appeal will interpret the statute the same way that we do – that 'software' means software, not data."

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